[fol. 2854] Q. Now, sir, I will ask you a question as an individual: Is it true, sir, that you are personally opposed to trip leasing?

A. Well, I don't think I want to answer that categorically. I think I would like to put some explanatory remarks in there.

Q. Yes.

A. I recognize the economic factors Mr. Markowitz gave this morning, and others I understand have given testimony that I have not heard. My selfish opinion is that I see no economic reason for the existence of short-term leasing in the trucking industry. I have been convinced as chairman of this committee that there is an economic necessity for it in many, many cases. I think the economic factor itself does not have a proper place in these proceedings because this is not a rate matter.

I find many practical defects in trying to arrive at any way in the world that the desirable things in the economic factor could be accomplished without preventing some things that are very desirable to the industry, so that fundamentally, while I feel that we could get along without any trip leasing, yet I must bow to the circumstances as they are, and I think at this time it is wholly impractical to even consider it at all.

Q. I would like to have you explain your position. You personally, you might say, are not, insofar as you are concerned, in favor of trip leasing, with the qualifications that you made, nevertheless you are supporting the position of the A.T.A. as chairman of the committee.

[fol. 2855] Now, you might want to explain your position in that matter.

A. I say again that the preponderance of evidence that this committee has received on the question led me to change my fundamental position, and at this time there is no difficulty in my mind in reconciling my thoughts to the position taken by the industry in these proceedings.

I started out under the assumption that the best thing for the industry was no more short-term leases. I have become convinced otherwise at the present time.

Q. You are convinced it is necessary at the present time?

A. I am. I believe the weighted evidence before this proceeding will show it is very necessary and that no purpose at all would be served if it were discontinued.

Q. Could you give us the other members of the committee?

A. Yes, I think I have a complete list with me.

Mr. Idol: They are in the record.

The Witness: I will repeat them if you wish.

By Mr. Eldred:

Q. He went so fast that I couldn't follow him.

A. Myself as chairman; C. J. Williams, of Milwaukee, Wis., a contract carrier; C. J. Roush of Akron, Ohio, a regular route common carrier.

Q. Do you know what concern he is connected with?

A. Roadway Express, Inc. Mr. Williams' Company is Hillside Garage & Transfer Company. A. F. Schertzberg of Grayvan Lines, Inc., household goods carrier; Joseph [fol. 2856] M. Adelizza of Motor Carriers Association of New York, representing local cartage interests; Charles P. Clark, Columbia Terminals Company, St. Louis, Mo. His representation is really threefold, contract carrier, truck leasing company, and some common carrier rights, I believe.

J. B. Cole, Jr., Birmingham, Ala., the Jack Cole Company, Inc., irregular route common carrier and truck leasing company; John M. Akers, Akers Motor Lines, Inc., Gastonia, N. C., common carrier; R. C. Williams, of the R. C. Williams Oil Field Trucking Company, Russell, Kansas, representing oil field haulers; Ray Lilenquist, Inland Freight Lines, Salt Lake City, Utah, a regular route common carrier; Fred Hufnagel, the Sun Oil Company, Philadelphia, Pa., a private carrier; B. J. McHugh, American Sugar Refining Company, New York City, a private carrier; Walter Carey, Commercial Carriers, Inc., Detroit, Mich., an automobile hauler.

At that point I want to say that Mr. Carey and the rest of the automobile haulers asked George Dixon to serve on the committee in Mr. Carey's place, and Mr. Dixon worked

all the way through with us, and Mr. Carey appeared only a few times.

John Vickers, Carolina Delivery Service, Charlotte, N. C., a film carrier and special hauler; W. S. Seitz, The Michigan Motor Freight Lines, Detroit, Mich., a regular route common carrier.

[fol. 2857] Acting also with that committee, at the instructions of the various conferences, in addition to Mr. Dixon, was Mr. Clarence Todd, of Washington, D. C., attorney for the contract carrier division. We also had the continued help of the staff secretaries representing tank truck operations, Mr. Austin Sutherland—no relation of mine, although the same name—Mr. Frank Floyd, of the local cartage group, Mr. R. J. McBride, of the common carrier division, Vince O'Connell of the private carriers conference.

That was the regular constituted committee and the staff men assigned to it.

Q. The Roadway Express, I will ask you, Mr. Sutherland, to your own knowledge do they engage extensively in leasing?

A. I think they operate quite a few leased vehicles but not nearly as many as they own, I believe.

Q. You don't know that?

A. I think I am right on that. They own more than they lease.

Q. Grayvan Lines quite a number of owner-operators?

A. I think Grayvan Lines operate largely, if not exclusively, under hauling contracts with no leases of any kind.

Q. Mr. Adelizzi is not connected with a carrier, as such, at the present time?

A. He was appointed by the local cartage people to represent their interests on the committee.

Q. And Mr. Clark of Columbia Terminals—they engaged through one of their subsidiaries in extensive leas-[fol. 2858] ing operations through various types of individuals? Is that true?

A. They have a leasing company. I don't know if it is subsidiary.

Q. Now, I suppose you would be familiar with commercial carriers?

A. I think I know how all of them stand. If you are trying to find the pro and con leasers on this committee, I can give them to you.

Q. Outside of the Williams boys they are all in favor of leasing; is that correct?

A. That would not be true at all. Both of the Williams, as you say, were opposed to it; Mr. Adelizzi was opposed; Jack Cole had much opposition to short trip leases anyway; Seitz was opposed very definitely to short term leasing—the committee, when we started out, was about fifty-fifty, some in favor, some opposed.

Q. How did it wind up?

A. Unanimous, every man that was present on these recommendations—it was unanimous, without any exceptions. Mr. Jack Williams of Wisconsin was not present at the last two meetings and did not take part, therefore, in the deliberations which led to this final report.

Unfortunately I think he was out of order, and I told him so in writing, when he formed a minority report. It was one man's opinion because he had not heard the deliberations of the committee.

[fol. 2859] Mr. Todd was a staff man, as I said, assigned to the committee by his carriers, and he was opposed as far as the trip lease on a one-way basis was concerned.

Q. Now, you say that all these men with the exception of a reservation by Mr. Todd and C. J. Williams, were unanimously in favor of trip leasing?

A. Yes, unanimously in favor, unanimous in adopting the final report which went to the convention with the recommendation.

Q. That does not mean that they were personally in favor of it. Is that true?

A. I would not say that was true at all. I know that bunch of fellows to be pretty rugged individualists, and I don't believe they would vote for something they were not convinced was correct, and they voted for this report and voted unanimously.

Q. In connection with these rules, I suppose you have read the abuses which were outlined here by Mr. Blanning

the first day. To your knowledge, did some of those abuses exist?

A. Yes, I think we have heard of every one of those, and some more besides, probably.

Q. Now, will you tell us how—

A. I assume I am back talking, now, as a member of the committee instead of an individual.

Q. Yes. Maybe someone else will take you over personally.

Under your rule 2a(1), provision is made that "Contract, [fol. 2860] lease, or hauling agreement for the use of equipment under this rule shall be in writing and signed by competent, authorized employees or agents of both parties, or the principals themselves."

In the case of the one-way lease going to a destination point where the authorized carrier has no terminal or representative, in what way does the lease tend to release the vehicle on arrival at destination?

A. We think the terms of the lease itself will probably provide that he would be released upon a time certain or upon a condition certain, which is easily ascertainable in the lease itself.

Q. In that answer, it would be possible to have the owner-operator as the carrier's agent, wouldn't it? That is what you are really doing there, isn't it?

A. I wouldn't say that was true. I think maybe you misunderstood what I said. If the owner-operator, or anyone else with whom we might enter into a hauling agreement or lease, entered into an agreement which was to terminate at a point where the carrier, the principal involved, did not have an office, employee, or agent, he could under the terms in drawing that lease express a condition certain upon which it would be terminated, and the termination would be automatic on the fulfillments of the conditions.

Q. Take, for instance, your time certain.

[fol. 2861] A. Either a time certain or a condition certain. Sometimes a time might not be practical.

Q. Take, for instance, your condition. Your time would not be practical. What would that condition be as an example?

A. A condition certain might well be at the time be discharged the cargo completely and got a signature from the shipper. I am giving you just one illustration. There could be a great many, of course.

Q. Now, with respect to your rule 2a(3), which provides that contracts, leases, or hauling agreements should contain a compensation clause, does that contemplate a measure of compensation in any way?

A. Not except it must be a known condition.

Q. In other words, that will be entirely optional between the owner-operator, if it is a haulage agreement, and the carrier?

A. Either the owner-operator or leasing company or anyone else who furnishes equipment. It is a contract between two individuals.

Q. Is there anything in your rules to prevent the owner-driver from being paid for his service prior to the time of completing the transportation charges?

A. That is a matter of contract between the parties.

Q. If that was true then how do you square that with rule 2a(3)—that is, square 2a(3) with 2e(3) which provides the authorized carrier shall remove the device upon relinquishing possession in accordance with rule 2b, and [fol. 2862] before final settlement for the rental charges is made?

A. You couldn't give final settlement until that was complied with.

Q. There is nothing to prevent the carrier being paid at the time he receives the freight?

A. It very definitely prevents him from being paid for his own work. I thought you meant wages. That prohibition is very definite.

You cannot pay him in full for the use of his equipment until after he has performed the condition certain. It says "before final settlement is made," and a carrier that settled finally would be in violation.

Q. You might hold out $1 from him if the charge was $1.50, and that driver would say, "The deuce with the dol-

lar." He might say, "I don't give a hang." Isn't that true?

A. I can't conceive of any carrier leaving himself in that position. That again is the private right of contract between two individuals.

Q. Have you read Mr. Williams' criticism of your report?

A. Yes, when it originally came out I read it over, back in September or whenever he wrote it.

Q. Published in "Transport Topics"?

A. Yes.

Q. Would you tell me how, for instance, any of your proposed rules would change or eliminate the abuses which [fol. 2863] you know exist today?

A. I think much would be gained if I talked about specific abuses.

Q. I would rather have you do it. You know the situation probably far better than I do. What do you consider yourself as the most prevalent abuse of sound regulations?

A. One of the most prevalent abuses today is lack of proper identification on the vehicle so it is impossible to ascertain under whose responsibility any vehicle is operated.

Mr. Markowitz went into some detail on it this morning. The courts are full of cases where insurance companies acting for carriers are taking the position "It was working for us before but not now," operating under what he called bypass agreements where they go into someone else's territory without proper identification. Those are the two greatest abuses we have found over the country.

Q. How would this stop carriers from bypassing and going on beyond their present rights?

A. We provide that no carrier shall interchange any piece of equipment with another carrier without first submitting a plan to the Commission describing how it is to be done. He can't do it. It is illegal if he does. He must have a plan on file with the Commission before he can interchange with any carrier at any point and that must describe how he is going to do it.

[fol. 2864] Q. Where is that provided for?

A. Under your interchange rule.

Q. In other words, you propose that before interchange may take place——

A. Before any interchange may take place——

Q. That is of vehicles or traffic?

A. Interchange is vehicles, interlining is traffic. Before any interchange of vehicles between authorized carriers shall take place they should file with the Commission a written plan as to how it should be done, where it is to take place, where responsibility rests at all times, providing for the safety requirements of the Commission and the identification, and the vehicle must carry on it at all times a certificate that it is operating under a plan as filed with the Commission. That is what we provide.

Q. You think that will control that situation?

A. It will at least make it very evident that anyone who is violating it is in violation of the law. The committee has not had any suggestions from any place anywhere in the industry of any other way to begin to accomplish it, and it is stiffer than anything the Commission ever suggested in their proposed rules.

Q. Now, there is no criteria set up. They submit whatever plan they desire and it is up to the Commission?

A. Section 216(c) of the Act is permissive, and says carriers may enter into through rates for movements of goods. It is permissive by Act. We think the Commission should [fol. 2865] have a look see and if somebody is trying to evade responsibility they ought to see to it. You can't put a prohibition against doing something permitted by law unless you change the law.

There is also another question. We made it a little broader. Section 216(c) applies only to common carriers. The Commission in its wisdom may grant permission to interchange to other carriers. We made it apply to all other carriers having approval from the Commission or authority by law.

Q. You are talking about rule 3 of the Commission's rules which applies to interchange of equipment. Are you opposed to those rules?

A. I don't even recall what their rule 3 was. I will take a look at it.

Our comment on rule 3 is two fold. In the first place, we think it is quite confusing in its wording because it appeared that their rule 2, coupled with this rule 3, might prevent authorized carriers from exchanging equipment under any circumstances except those covered under rule 3 which would, of course, eliminate them from augmenting their equipment by lease. That was quite obscure and we felt should be straightened out.

Then we went to the fact that they limited their rule 3 to operation of common carriers and yet it is quite possible they might extend the same authority to other carriers and I believe there is a case or so still pending asking for that [fol. 2866] authority, so we differed from them and made ours apply to anybody who had such authority. They limited the interchange of equipment to trailers only. We find no justification for it whatsoever.

In many parts of the country they don't use trailers. The rules are sound and solid. They can go through as well with the straight truck as with the tractor-trailer, or a trailer alone. They prohibit interchange where either carrier serves both origin and destination. We don't make any such prohibition by any manner of means.

There are many interchanges to off-line points where the carrier has authority to serve, and the interests of the public are better served by utilizing another carrier in interchange, and we thought that was unduly restricting the service to the public and we took it out.

They required the use of the authorized carrier's driver. We don't believe that has any place in the situation at all. The Commission ruled the responsibility goes to the carrier to whom they issued authority. I believe your rules read this way: No carrier shall require or permit anyone to drive a vehicle in its service until and unless it has complied with—and then come your various things.

Those rules go to the carrier and as long as the carrier provides the thing he is responsible for it doesn't make any difference whose driver is on the vehicle as long as that responsibility is accepted.

[fol. 2867] Q. That is a very nice position to take but as a practical matter do you think you, as a carrier, can control a driver who is employed and paid by some other company operating over your routes?

A. I think the interchange agreement between us can well provide for that.

Q. The agreement may provide for anything, but I mean, actually, do you think you can control a driver you don't employ?

A. Yes. Am I talking again personally, Mr. Eldred?

Q. Yes.

A. I can provide in my interchange agreement that I have a right to remove him. I can control him.

Q. After the thing has happened you can remove him?

A. Let's go beyond that a little ways, if you will. In the first place, if he is working for another authorized carrier he has already complied with the safety requirements and is a qualified employee.

Q. We will assume that.

A. Yes. And if I hire him from another carrier or a union hall, or hiring hall, I will have to accept him as a qualified man. I am in no different position than if I take him through an interchange agreement which provides where the responsibility rests.

Q. You still maintain you would have the same control over that driver as one of your own?

[fol. 2868] A. Yes.

Q. And you think he would obey your instructions?

A. Or he won't work any longer, the same as any other man driving my trucks.

Q. That is all I have to say.

A. The record speaks for itself.

Q. In your own business, how many trucks do you own?

Mr. Ellis: I want to object to this constant weaving back and forth on the record. To begin with, I have not examined it thoroughly, but if my recollection serves me right Mr. Sutherland did not testify at all about his own business. If Mr. Eldred wants to make him his own witness, that is one thing, but to take this personal matter as cross-examination and get it on the record I don't think is proper.

Mr. Eldred: I will withdraw. Let someone else take him and if I desire to make him my witness later I will do so.

Exam. Lawton: As I recall, Mr. Sutherland offered to be examined on his operations.

The Witness: I did because a remark was made——

Exam. Lawton: I think the cross-examination should be completed. I might observe that the objectives of this exhaustive cross-examination which appears to develop defects in these rules might be taken care of by your argument in brief. You are taking up many, many pages of the record.

[fol. 2869] Mr. Burton Wheeler: I desire to cross-examine but I would like to defer it at this time.

Exam. Lawton: Anyone else?

By Mr. Pou:

Q. I have two or three questions, Mr. Sutherland.

Mr. Sutherland, I believe you stated that many of the carriers, particularly the large ones, purchase new vehicles on a basis so that the monthly or other stipulated payments are not greater in amount than the allowable depreciation on the vehicles. Is that correct, sir?

A. I know of many such plans, yes.

Q. I believe you stated that was the plan among many of the larger carriers, particularly.

A. That is right.

Q. Do you recall seeing, or did you see, Exhibit 6, which was offered in connection with the testimony of Witness Kiley of A.T.A.?

A. Yes.

Q. Do you recall that that exhibit at the bottom of the first page contains a statement that if the carriers had to purchase the equipment operated under leasing arrangements it would mean an expenditure of over $34,000,000?

A. That is correct.

Q. Now, do you agree with that statement?

A. Yes, that is a true statement; no question about it.

Q. It does not mean under the plan, which you have just [fol. 2870] mentioned, whereby the payments on the vehicles might be no greater than the allowable depreciation on

the vehicles, that $34,000,000 in cash would have to be put out?

A. If they had to be purchased. The other plan I described is leasing it from the manufacturer. That is a lease. This is a statement that if the equipment had to be purchased it would cost $34,000,000.

Q. But you don't believe the Commission should draw from this statement of Mr. Kiley that that is the only alternative towards purchasing that equipment?

A. Then you have to purchase it or acquire it by lease.

Q. The other type——

A. That is the type of lease that is in existence.

Q. That is not the type of lease we have been discussing from the beginning of this hearing. That might be called a lease-sale contract or conditional sale contract, or any one of a number of others?

A. This is not a conditional sales contract. It is merely rental that coincides with what he would write off for depreciation. That is not a lease-sales contract.

Q. That is not what we have found these abuses going with?

A. Oh, No.

Q. And you don't see any reason why many motor carriers cannot avail themselves of that for their equipment?

A. I don't see why they can't. The larger ones with their [fol. 2871] financial statements——

Q. And the smaller ones should not be permitted to do that?

A. That is a matter of his credit arrangements with the manufacturer, of course.

Q. I believe you stated in answer to a question Mr. Eldred asked on cross-examination, that you were familiar with abuses of the type listed in Mr. Blanning's Exhibit No. 2—anyhow the exhibit in which he listed typical instances of prevalent types of leasing. I believe your answer was that you were familiar with all of those and perhaps many more.

A. Yes.

Q. Would that be the picture just in your section of the country, or throughout the country?

A. My familiarity with them—very few have taken place, really, in the section of the country where I live. Most of my familiarity with them is based on experience I have had since being chairman of this Leasing Committee and hearing from all over the country.

Q. And it is based upon your experience as chairman and is based upon conditions throughout the country and——

A. And Mr. Blanning and his staff gave so many illustrations that we have become familiar with.

Q. And you don't consider those instances Mr. Blanning gave as isolated instances?

A. I think probably 95 percent are a direct violation of law and rules of the Commission and they are not abusive [fol. 2872] practices due to leasing, or anything else. Whenever a carrier permits a driver to go out and work without a medical examination——

Q. That is a violation of the safety rules?

A. Yes, and 95 percent of them come under that class. I consider them as violations.

Q. And violations of the Act itself rather than abuses due alone to leasing?

A. Absolutely.

Q. Did you hear the testimony of Mr. Markowitz this morning?

A. I did.

Q. He mentioned certain types of abuses also in connection with his testimony. You heard those mentioned, did you not? Do you recognize those types as being prevalent in the section of the country where you operate?

A. Not as abuses, Mr. Pou. Those were violations.

Q. We call them practices.

A. They are violations. It is a violation of the State law and certainly a violation of the Commission's rules.

Q. I am trying to find from you if you recognize that sort of thing going on.

A. That sort of thing does exist.

Q. Throughout the country?

A. Pretty generally all over. Some places more than others, but it is pretty general.

[fol. 2873] Q. I suppose it goes without saying that you believe that whatever abuses you do recognize as being in

existence will be cured, or the situation will be met if the rules recommended by the A.T.A. are prescribed by the Commission and are enforced. Is that correct, sir?

A. Yes. I believe that is a very, very clear statement of fact.

Mr. Pou: That is all.

Exam. Lawton: Anyone else?

By Mr. Arpaia:

Q. Am I correct that in response to a question by Mr. Eldred you said you were opposed to trip leasing?

A. I said I was originally.

Q. You have been in this business a long time, Mr. Sutherland?

A. Yes, that is right.

Q. And you have had a great deal of experience with operations of all kinds?

A. Yes.

Q. And you brought a wealth of that experience to this committee?

A. That is right.

Q. And probably that is one of the reasons you were designated as chairman.

I will ask you why, originally, you were opposed to trip leasing?

A. Well, pretty generally, I recognize the depressing effect that improper trip leasing has had on general rate [fol. 2874] structures. Pretty generally we find, as Mr. Markowitz said this morning, that every now and then someone pops in with a depressing factor as far as the rate level is concerned, and when you get behind it it is justified because of the trip lease proposition. I felt that was not a good thing for the industry in its long-range financial stability picture.

Q. And you haven't any reason to change that opinion, have you, Mr. Sutherland?

A. No, I still hold that opinion. I think it is quite possible and quite proper that something may have to be done

about that payment situation in the few cases where it is a detriment, and it is a detriment in a few cases.

I think it is a proper subject for a rate proceeding instead of a leasing proceeding. I don't see how we can properly bring it in here. It is a very minor part of the leasing subject. It is a thorn in the side of the fellows who are trying to live up to a proper rate level, and it is a very minor part of the leasing situation.

I would personally deal with the thing a little different if somebody could point out a method by which you could deal with it without preventing other cases where trip leasing is absolutely ethical. At the same time a regulation on national scope would have to be a standard regulation, and if you put it in to stop those abusive practices where it had a depressive influence on the rate level at that par-
[fol. 2875] ticular point or section you would have to prohibit it in cases where it is necessary to the economy of our country.

Q. You will admit, won't you, Mr. Sutherland, that there is an inequality of competition between an operator who uses trip leases and an operator who has made an investment and maintains his fleet and employs help, garages his equipment, trains his drivers, supervises all those things—you know what the various things are—who has no paid vacations and no paid holidays, and no breakdown time and no overtime to pay—that it does create an inequity of competition?

A. I have been convinced that the factors you speak of are by and large being more than paid by the operator who is using leased equipment.

We had before this committee a large number of exhibits —some I think are already in this record and others will come into the record—and in practically in no case have we found where the operator of leased equipment was not paying more per ton-mile, or per-mile, for the use of the equipment, than it cost him for his own equipment. All are paying those charges, and more besides, with very, very few exceptions.

Q. Well, you will admit there has been disruptive and restrictive effects on normal rate structures by people who indulge in the practice of trip leasing instead of investing in equipment. You will admit that?

[fol. 2876] A. I said I knew of some cases where it had, yes.

Q. Now, isn't it true, from your experience and observation, Mr. Sutherland, that the only reason why an operator who uses trip leases can possibly make the amount of money or profit that he does, and reduce rates, depress rates, is because he does not have to give to the ordinary shipper the services which those ordinary shippers require?

A. Again we take isolated conditions, Mr. Arpaia, and try to get general answers; and it is impossible to do it without the whole picture in front of you.

The thing you described in that question does take place some places in the country. There is exploitation. Let's grant that is true. It is certainly not only an exploitation of the individual who might own the piece of equipment, but of the rest of us in our general rate levels throughout the country, and they are particularly thorny, but they are so small percentagewise that we cannot apply to the whole industry the picture you drew in that question. It does not apply.

Q. Just suppose every certificated operator were using trip leases to conduct that operation. Do you think these people today who indulge in that practice would be able to depress rates if they had to provide a pick-up of 100 pounds 30 miles away, miscellaneous freight pick-ups, consolidation of the freight at the terminals, cargo claims that arise through the classification and handling of that freight? Those services are now being provided for ship-

[fol. 2877] pers by the bona fide fleet operator. The gypsy operator is getting the benefit of the cream.

Suppose they all did that? Wouldn't there be a breakdown of the transportation system of this country?

A. No question of it. If the whole industry turned to skimmers there would be nothing left but skim milk.

Q. If these practices are being indulged in, isn't it necessary that in order to survive, because of the fact that the

legitimate fleet owner is getting more and more miscellaneous freight, poor paying freight, that he will have to resort to those same practices?

A. I don't think that necessarily follows. Mr. Markowitz indicated their company had found it necessary to do it in one case. I have not found any other evidence, and I don't think anyone ever brought evidence to our committee, that that was true—but I know many operators who wouldn't resort to it regardless of what happened.

I don't think the whole industry is a bunch of skimmers who are out to scuttle themselves.

Q. You don't think that after all if the Commission does not do something to curb this tendency, this trend, that the obligation which it owes to this country through the mandate of Congress to foster sound conditions in transportation and to avoid disruptive and restrictive practices, is going to be—I don't know how I started that sentence—but [fol. 2878] the idea is that will fail?

A. You have laid your finger on exactly where the committee arrived. This matter you have discussed belongs in a rate case and this Commission is not performing their duty when they allow those depressed rates to go in on such a showing, but it has nothing to do with the practice of leasing.

Q. But the source of this problem is the inequality which exists between the legitimate fleet operator and the operator who uses trip leases. Isn't that true?

A. No, that is not true. The inequality exists because the Commission allows unduly low rates to become effective where they have no business doing it. That is what causes it.

Q. Those rates which the fleet operator must charge in order to have a compensatory rate may be highly profitable to an operator who is paid on a percentage of the freight that is hauled by the trip lessee?

Mr. Idol: Mr. Examiner, I object. There is no basis laid for that assumption. It seems to me we are becoming speculative.

Mr. Arpaia: This man has qualified as an expert.

Exam. Lawton: He may answer, but I think we have gone far enough.

The Witness: Will you read the question?

(Question read.)

[fol. 2879] The witness: The answer is "Yes."

Exam. Lawton: Do you have further questions?

Mr. Arpaia: That is all.

Mr. Burton Wheeler: I would prefer to go until tomorrow morning.

Exam. Lawton: I don't know if the witness will be here in the morning.

The Witness: I can be here.

By Mr. McAuliffe:

Q. Mr. Sutherland, eliminating the 95 percent of the so-called abuses which you consider to be violations, and the other 5 percent of the abuses from consideration, would you say that this Commission should go ahead with this investigation to determine the economic advantage or disadvantage to particular carriers resulting from present leasing practices?

A. Yes, I think they should, Mr. McAuliffe.

Q. You really think this should be a rate case?

A. I am not talking about the rate angle of the situation now. I think the committee and the Commission's staff, in their proposed rules have made some suggestions as to rules which will have the effect of helping to bring some of these illegal practices out in the open, expose them, and lead them more readily to elimination.

I think the proceeding should go on and there should be an overhauling or an institution of those rules by this Commission.

[fol. 2880] Q. As I understand, that is why you and your committee have initiated certain rules.

A. Yes, sir.

Q. I don't believe you understood my first question.

A. Maybe I didn't.

Q. Eliminating from your particular consideration at this time those abuses, including violation of the present

law and abuses which are not violations, should this particular proceeding be made a rate proceeding as to the economic advantages or disadvantages of leasing trucks?

I am just trying to ask your view, as the chairman of this committee, as to whether this investigation should be confined to these abuses which have been mentioned as such, or whether it should take into consideration whether leasing should be prohibited for the benefit of the man who does not lease vehicles?

A. Well, you are asking my opinion. I think the two subjects are entirely different, and I don't think the economic factor has any place at all in this particular hearing. It is not my opinion, because of any fixation, but it is based upon information gathered from all over the country in regard to this hearing.

Q. In your proposed rule 4 you suggest that authorized carriers furnish a letter to the Commission at the time they [fol. 2884] either lease a vehicle from a shipper, or to a shipper. By what authority would you demand that letter of the carrier?

A. That would be under our theory under the Commission's authority to police and enforce tariff requirements and see to it that they are not violated by rebate. They come under that section.

Q. To determine whether or not it was an indirect rebate?

A. To determine whether or not it was an indirect rebate; that is right, sir.

From your experience, personally, and with this committee, would you say the carrier who was undertaking to make an indirect rebate would comply with that particular regulation?

A. That, of course, is probably not true. He probably would violate that just the same as he would anything else, but in that particular case the reason for the rule is that the Commission could then step in and prosecute him for violation of rule 12, if that were rule 12, and not on the broader subject of having made a rebate which is not so susceptible to prove. A cop can arrest you for running through a red light and don't have to prove you are a poor driver.

Exam. Lawton: Mr. Sutherland, don't you feel that if the Commission should adopt regulations which would fix responsibility definitely at all times and assure compliance with all of the safety rules and the other regulations by the carrier using leased equipment—wouldn't that tend to elim-
[fol. 2882] inate some of the economic advantages that the fleet owner might be under at times under competition with the user of leased equipment?

The Witness: I think you are right, that the economic situation would be to a marked degree lessened. What degree of lessening would take place is theoretical, but I think there would be a marked degree of lessening. I don't think this of itself alone will stop the skimmer operation, the skimmer who goes in and takes off the profitable freight by cutting rates and leaves the carrier who is actually performing a transportation service with nothing but the undesirable freight. I don't think these proceedings will eliminate but I think it should help it to a very marked degree.

Exam. Lawton: That is what I mean.

By Mr. Burton Wheeler:

Q. Mr. Sutherland, were you one of those who came before the Senate committee and testified asking for the adoption of the Motor Carrier Act?

A. No, I was not, Senator.

Q. You do know that a great part of the industry did come down to Congress asking for the passage of the Motor Carrier Act, don't you?

A. I think that is correct.

Q. Do you recall one of the reasons why they were asking for it?

A. I don't know that, no.

Q. Do you not know that it was because of the chaos that
[fol. 2883] was existing in the industry at that time?

A. I have heard it described, yes.

Q. The chaos existing in the industry at that time, and because of the fact that they complained about the breakdown of the economy of the trucking industry.

Now, if these gypsy operations tend to break down the economic structure of the industry and the Commission can pass rules and regulations which will tend to prevent that

by rules and regulations regulating the gypsy operations, or outlawing them or whatever is necessary, why do you say that it hasn't any business in this hearing, that it should come up in a rate hearing?

A. Well, simply for this reason: That rules and regulations of themselves are meaningless. They have to be enforced. They have to have enforcement behind them. It is not the practice of leasing and the gypsy operator that is depressing the rate levels. That is what I tried to tell the other attorneys. The Commission does not have to issue rules to do that. They can stop the—

Q. How can they without reference to rules and regulations? It is not the gypsy that runs out and cuts the rate entirely?

A. It is a carrier who files a rate and the Commission allows it to be cut. The Commission cuts the rate as much as the carrier does.

Q. Talking about the breakdown of your rate structure [fol. 2884] by somebody filing a lower rate?

A. Yes.

Q. That is an entirely different thing from the regulation of the gypsies which control the breaking down of the rate, as Mr. Markowitz testified this morning. You heard him testify, did you not, that because of one group who employed gypsy operators that they could take this business at considerably less than what his company could do unless they had these gypsy operators? Now, if the effect of what Mr. Markowitz said this morning is correct—that is not only his testimony, but, as I understand it, the testimony of other witnesses—then it hasn't any place in a rate structure because the Commission by a rate structure could not cure that. The only way to cure that is by rules and regulations which will prevent that sort of operation unless it is further regulated. Isn't that a fact?

A. No, I don't think it is.

Q. Why do you say it is not?

A. That question was so long that I admit I will have to stick to the bottom end of it.

I want to make it clear I don't agree with Mr. Markowitz with regard to that one thing and I don't find many instances of it going on over the country.

Q. You don't agree with what he said with reference to the gypsy tending to break down the rate structure?

A. No, no.

[fol. 2885] Q. You have testified, I think, that the gypsy operator has no substantial investment. Is that correct?

A. No. I would like to get clear what you are talking about when you say "gypsy operator."

Q. You have heard the gypsy operator described here.

A. I don't use that term, and our committee didn't use it. We defined what was being talked about and we stuck to the definitions or else we would get balled up.

Q. The gypsy operator has been described as one who leases out for a trip, or you might call them trip leasers, and then there are people who engage in trip leases entirely, but the terms have been intermingled, more or less.

Exam. Lawton: You mean the itinerant?

Mr. Burton Wheeler: Yes.

The Witness: As against the operator who has a haul in one direction and an empty vehicle in the other direction and therefore puts it under lease for one trip. Which of these two trip leasings are we talking about?

By Mr. Burton Wheeler:

Q. Both of them. What is the distinction between them?

A. There is considerable distinction between them.

Q. Tell me.

A. A hauler of exempt commodities or a private carrier?

Q. We are now talking about private carriers.

A. He hauls his own merchandise in one direction and [fol. 2886] starts back in the other direction empty and leases for that trip. There is a lot of difference between him and the itinerant trip leaser who floats around over the country.

Q. If he leases under those circumstances he has no substantial investment, has he, compared with a man who owns a fleet of trucks?

A. He may have his all in that one truck he does own.

Q. But I say he has no substantial investment compared with the man who has a fleet of trucks, has he?

A. Measured in dollars, no. Measured in his own worth he has everything in it.

Q. He has no overtime to take care of as the owner of a fleet of trucks who employs union labor, does he? He has to pay no overtime?

A. No, I assume he does not have to pay himself anything in wages.

Q. He does not have to pay himself anything?

A. No, he can let it all go.

Q. He has no vacations to take care of for his employees, nor does he have any interruptions due to labor problems.

A. I don't think that is quite true, sir.

Q. How?

A. I don't think that is quite true in practice.

Q. What isn't true?

A. They take vacations.

[fol. 2887] Q. But he doesn't have to pay himself for his vacation, does he? On the other hand, the fleet operator has to pay.

A. I don't know that he separates it and puts it in two pockets.

Q. You understand what I mean.

A. I don't, sir. I am confused on what you mean.

Q. You understand that a fleet operator does employ people and he has to pay them for vacation time, doesn't he?

A. I do; my union contract is that I do so. I do myself.

Q. I say the trip operator does not have to do that, does he?

A. I don't know if he has a contract or drives himself, or what.

Q. If he drives it himself he does not have that expense.

A. I don't know what he considers expense.

Q. We are quibbling over words.

A. I am not quibbling over words. I would like a description of what this man is.

Q. He does not have the administration costs that the fleet operator has.

A. He has no overhead whatsoever.

Q. No social security or sickness or other benefits to provide for the employee, does he?

A. He may; I don't know.

Q. If he drives himself he doesn't, does he?

A. He can elect to. He is working—that is an election [fol. 2888] allowed him. I have a man working on my farm who is exempt but he elects to be covered.

Q. I am talking about the man who drives his own truck.

A. He may elect to cover himself and he has the right to do it. He might not separate his money and put it in two or three different pockets.

Q. You know as a matter of fact—

A. I know they are rather prosperous.

Q. You know there are few, if any, in this country who come under the Social Security legislation who are working for themselves, or engaged in business for themselves?

A. I understand the independent contractor very generally does not come under it.

Q. Very, very few come under it, and you know that not only the independent contractor in your line of business, but in every other line of business in the United States—

A. I said I think the independent contractor generally does not come under it either in this business or any other. I would like to interpolate that in our experience almost 80 percent of the men reporting to us as owner-operators and driving their own equipment are under Social Security and are direct employees of the companies using them.

A very small percentage are not independent contractors.

Q. How many independent contractors do you have?

A. Every man on my pay roll is on my pay roll 100 percent.

[fol. 2889] Q. Do you have any employed trip leasers?

A. I had 26 of them from the first of January to the first of November; out of 8,411 trips there were 26 trip leases.

Q. Out of how many?

A. 8,411 trip sheets.

Q. How many people do you employ?

A. 330.

Q. Isn't it a fact that the so-called gypsy, or the trip leaser, who just owns his own truck holds a totally unfair and unequal advantage over the legitimate operator who does have a fleet of trucks?

A. No.

Q. In your opinion, he does not?

A. He does not.

Exam. Lawton: You are contrasting the user of the gypsy equipment as compared with the fleet owner?

The Witness: That is what I think he is getting at but he isn't doing it, Mr. Examiner?

Exam. Lawton: Am I correct, Mr. Wheeler? You are contrasting two types of carriers, one using the itinerant trucker and the other using his own fleet of trucks.

The Witness: That isn't what he is asking me. If that is what he has been asking me many of my answers would be different. He is asking about a legitimate carrier against a man driving his own truck who is not a legitimate carrier. [fol. 2890] Exam. Lawton: You know what he meant.

The Witness: I was confused as to what he was talking about.

By Mr. Burton Wheeler:

Q. I am talking about the man who may own his own truck, or the man who does not own his own truck, as against the owner of the fleet who makes trip leases.

A. We don't have that type of operation.

Q. What is the type of operation that you have then? Let me ask you that.

A. I am talking about in the industry.

Q. You are talking about in the industry?

A. We have two different types of carriers we have been discussing all the time. One is a man who operates a wholly-owned fleet and the other operates a fleet he does not own. Some he may own part of but those are the two extremes.

Q. I was talking about the man who takes a trip lease from you or somebody else because he owns his own truck, but he leases it to you and he leases himself with it. You understand that, do you not?

A. No, sir; I do not, sir. That does not take place. I have never heard it described.

Q. You never heard that described?

A. No.

Q. You heard Mr. Markowitz describe it this morning.

A. Maybe I am being obtuse here, but I am trying to find out exactly what you have in mind and then I will give [fol. 2891] you an honest opinion. I really don't know what you mean.

Q. You heard Mr. Markowitz describing the man this morning, the gypsy that he employed on a trip lease.

A. Yes.

Q. And he stated that man not only leased his truck but he leased himself.

A. Yes, Mr. Markowitz said that.

Q. That is the type of man I am talking about.

Exam. Lawton: You were not referring to the carrier who employed that type of individual?

Mr. Burton Wheeler: No.

Mr. Ellis: Then I submit the witness' testimony was correct.

Mr. Marx: Mr. Examiner, it is now 4:15. Mr. Gross has been here since he was on the stand and we have distributed additional copies of his testimony. If there is no cross-examination I would appreciate it if you would release him so he can make the 5 o'clock train for New York City.

Mr. Lordan: I was the one who asked for an opportunity to read the statement, and I have read it. I have no questions.

Exam. Lawton: The witness Gross is excused.

Mr. Marx: Thank you very much, sir.

By Mr. Burton Wheeler:

Q. As I understand it, you feel that the Commission today can correct all these abuses which you say are viola-
[fol. 2892] tions without any further rules and regulations.

A. I hope I didn't say that. I didn't mean to. I think they could go a long ways. Many of the things they call abuses are definitely violations and the suggested rules they made would be definitely helpful in clearing up others, but the ones we made would be more helpful in clearing them up further.

Q. Then you don't contend that the suggested rules of the Commission here wouldn't help in clearing up these abuses?

A. They might be of some help but wholly impractical in many other regards.

Q. You think your rules and regulations would clear it up?

A. Would accomplish everything and more than the Commission's rules and be practical at the same time.

Q. Now, with reference to these so-called people whom you or others employ in making trip leases, when you have men working for you the union contract provides, does it not, that the employees can refuse to use a truck that is not in good condition?

A. Yes.

Q. But when you employ a man who owns that truck that same condition, of course, does not apply, does it? He takes any employment he can get?

A. Not in my company and not in the industry generally. The Commission's rules are that I cannot permit anyone to drive a truck unless it is mechanically correct. I can't dodge that responsibility.

[fol. 2893] Q. When you inspect it?

A. Usually right at the terminal.

Q. Who do you have to do it?

A. My own mechanical force or myself, or anybody who is capable that we designate to do it.

Q. Do you have garages there?

A. Sometimes.

Q. Where is your terminal located?

A. Are you talking to me as an individual?

Q. Yes.

A. New York City, Bridgeport, Hartford, Conn., Syracuse, Buffalo, Erie, Cleveland, Detroit, Mich., Pittsburgh.

Q. Do you have garages at all these places?

A. No. Most of our maintenance is done on contract with the White Motor Carrier on a mileage contract and goes into any of their branches at any place along the line.

Q. Speaking of these so-called gypsies—you understand what is meant by them—isn't it a fact that the tendency is for the gypsy, or the man who leases out on a trip, that he is more apt to work overtime?

A. Senator, I am not permitted to allow them to work overtime. That is my violation if I permit them to run overtime.

Q. If you have him just for a trip, say, from Connecticut to New York, or some other place to New York and when he gets there and picks up another load you have nothing [fol. 2894] to say over how long he works?

A. Certainly I do. I make a deal with him. I employ him, and I can't pass my responsibilities to him.

Q. When he works for somebody else on the return trip do you have anything to say about that?

A. They do.

Q. If he picks up a load what do you do?

A. I won't let him get on until I know he has had eight hours' rest. I take his truck and say don't come back to report for ten hours. I know he has been off duty that long. I have his truck and ten hours later he comes back and he makes his log and he punches the time clock. He leaves here and punches at the other end. I control that man.

Q. That is when he is working for you.

A. Yes.

Q. After he gets to New York and he punches the clock and he has left there—

A. Then it is the next carrier's responsibility to see he has been off duty for 10 hours and—

Q. And your contention is that these people do not violate the law—

A. I say if they do—any time they do the carrier is liable under the rules of the Commission and he should be prosecuted, and if the carrier permits any rule that you write to be violated and still is not prosecuted it is the car-
[fol. 2895] rier's fault.

Q. And, as I understand it, you do not think they need any new rules?

A. Not on that one.

Q. Did you hear Mr. Markowitz testify that on Route 1 he saw a great many accidents that were caused by people who did not have their trucks marked, and so forth? That would be a violation, I assume you would say, and no rule or testimony would cover that.

A. Mr. Markowitz' testimony will have to stand for itself. If there was a violation in that regard the carrier was liable. He is liable today under today's rules. The carrier is the only person the Commission has any jurisdiction over. Any rule they make will have to apply to the carrier and will have to be enforced against the carrier. That is exactly what their rules today are.

Q. So you don't think they need any more rules?

A. I didn't say that and that doesn't necessarily follow.

Q. You said the rules they have now will take care of the violations.

A. They themselves have not suggested that they change their hours of service rules.

Q. You do not think they need these rules at all, or any of the rules suggested in order to get better—

[fol. 2896] A. I am here, on the contrary, recommending adoption of other rules similar to theirs, but more practical in their application. I am recommending that.

Q. I think you said the members of your committee were about fifty-fifty that were engaged in leasing.

A. I didn't say that. I said about fifty-fifty at our first meeting when we first polled the committee, who were in favor of continuing trip leases and fifty-fifty of those who were opposed to continuing trip leases, and they ended up in unanimous agreement with one exception that I mentioned in favor of continuing trip leases.

Q. You said Mr. Williams was opposed.

A. Let's get that one straight. Mr. Williams was not opposed to a trip lease but he was opposed to a trip lease shorter than the roundtrip basis.

Q. You didn't agree with that?

A. No.

Q. C. J. Roush of Akron, Ohio—

Mr. Ellis: I object to polling this committee again through the witness. He has fully and completely explained it and it does not need to be explored any further.

Exam. Lawton: I think that is right. The objection is sustained.

By Mr. Burton Wheeler:

Q. I assume you had a great many arguments with the committee. You had a great many arguments in the com-

[fol. 2897] mittee, did you?

A. Yes, we did.

Q. And you reached a compromise finally?

A. We reached an agreement, not a compromise.

Q. If you reached an agreement it had to be a compromise, didn't it?

Mr. Idol: I object, Mr. Examiner. He is arguing.

By Mr. Burton Wheeler:

Q. Was your agreement as the result of a compromise?

A. No.

Q. Did you change the rules in any way, shape, or form after you first met?

A. Which rules?

Q. Your first suggestions.

A. Which rules?

Q. The ones that you proposed. The proposed rules.

A. We didn't propose any until our final meeting. We let the weight of evidence arrive at an agreement, and then we proposed something to fit that agreement.

Q. Did you have a report No. 2 and No. 3?

A. No—the final report was No. 3.

Q. No. 3?

A. Yes.

Exam. Lawton: That is the one adopted at the convention; is that right?

[fol. 2898] A. Yes.

By Mr. Burton Wheeler:

Q. And was your committee unanimous in favor of the principles laid down in report No. 2?

A. No.

Q. Well, then, what changed the minds of the committee so sharply by the time report No. 3 came out?

A. The weight of the evidence that came in, and the weight of the hearings we held subsequent to report No. 2.

Q. You held the hearings both before and after?

A. Yes.

Q. When did you hold the hearings?

A. I gave you a list of those, sir. There were 14 of them all over the country.

Q. What protection has one of your owner-operators got who was hurt in your service?

A. It would depend entirely upon the employment in which he was being used, whether an employee or inde-

pendent contractor, and it would depend upon the terms of his contract.

Q. What are the terms of the contract?

A. That is the right of contract between two individuals. I don't know. I don't use any of that type individually.

Exam. Lawton: Your people are all employees, as I understand it.

The Witness: Yes, sir; that is right, everybody is an employee.

[fol. 2899] By Mr. Burton Wheeler:

Q. On page 355 of the record you testified, as I recall, that you found no difference between equipment operated by you under long-term lease and equipment you owned, as far as direction and control are concerned; is that correct?

A. Yes. I was testifying not as an individual there, either, but as an industry man, although I do now subscribe to it as an individual, too. The industry found no difference.

Q. They found no difference?

A. They found no difference at all, in long-term leased equipment from owner equipment.

Q. On page 356 you referred to the difficulty of determining under whose control a piece of equipment is being operated as far as the insurance coverage is concerned. How would you cover an itinerant operator, the period between the expiration of the lease and the beginning of the next lease?

A. You wouldn't, even more than you would cover anybody else's vehicle if it was not working for you.

Q. Of course. On page 361 of the record you testified, "Abuses are prevalent in that portion of the trucking industry using trip leases and in other portions of the trucking industry as well."

Since the trucking industry is very competitive would you say the portion not using trip leases had to adopt the abuses of the leasing operator in order to remain in competition?

[fol. 2900] A. There might be some slight evidence to that effect. I think a categorical answer would be "no,"

but there is some slight evidence, as Mr. Markowitz said this morning, that on one small piece of business he had to go out and meet a competition created by the use of a lease operated on a trip lease basis. I think the answer generally is "no."

Q. I think you testified also that the trucks they finally disposed of generally went into the hands of the so-called gypsies. What have you to say with reference to that?

A. Well, that would be hard to say. I have never known of any vehicle I ever disposed of going into the hands of any gypsy and nobody brought any evidence in, and I am not testifying for the committee—but as an individual of many years' experience on this I think Mr. Markowitz is 100 percent mistaken, and it doesn't take place.

Q. You do subscribe to the idea that there are a great many violations, do you not?

A. The violations of the Motor Carrier Act are too numerous to contemplate. It is pitiful.

Q. How are you going to correct them?

A. Enforcement.

Q. Enforcement? Let me ask you this: If they are too numerous to mention how are you going to enforce them?

A. By adopting rules similar to the ones, or the ones submitted by us where enforcement can be accomplished very quickly in a carrier's office instead of hunting for his equipment on the highway.

You can bring him in and convict him of violation of rule 1 or 2, or whatever it is, without stopping him on the highway and proving he is incompetent or something else in a general term proceeding.

Q. You think these rules that you have suggested will do that?

A. I think so. The other 5 percent will be out in such clear light that we can take a look at it.

Exam. Lawton: I think you have said that three or four times.

Mr. Burton Wheeler: It is difficult to hear the witness sometimes when he is being cross-examined at the other end of the table.

Exam. Lawton: I have heard it at least twice.

By Mr. Burton Wheeler:

Q. I think I asked this before: Under a lease arrangement in which a driver worked for one company after another in rapid succession, how can the employer be sure his leased equipment is not working in excess of the hours permitted by the I.C.C.?

Mr. Idol: I object to that. It was answered in detail a few minutes ago.

Exam. Lawton: Read that question.

(Question read.)

The Witness: Do you want me to reply, sir?

[fol. 2902] Mr. Diehl: It has already been answered.

Mr. Burton Wheeler: I withdraw it.

The Witness: All right.

By Mr. Burton Wheeler:

Q. Who sets the rate of pay which your company pays to its owner-drivers?

A. It is a matter of contract between the two people. Sometimes it is through their elected representatives in bargaining, and sometimes it is dependent on the conditions. Are you talking now for the industry or as an individual?

Q. About the industry, and you as an individual.

A. I have answered for the industry. As for me as an individual, I am completely unionized and deal only with the representatives of my employees.

Q. Did the owner-operator have any voice in the rate of pay or did he negotiate with you?

A. I assume when two people sit down to contract they both have a voice in the terms of the contract, or they don't have to enter into it, or work under it.

Q. Does your company arrange financing of an owner-operator's equipment?

A. Our company?

Q. Yes.

A. We are not in the financing business. Our charter won't let us.

Q. Do you make any loans to your operators to help them buy trucks?

[fol. 2903] Mr. Idol: I object, Mr. Examiner. This has no bearing on the issues whatever.

Exam. Lawton: Overruled.

The Witness: We have many times made loans to all sorts of employees when we thought they needed it for many purposes and regardless of whether they were drivers or owners, or who they were.

By Mr. Burton Wheeler:

Q. How much equipment do you own yourself, your company?

A. I will categorically answer it this way: There is not a pound of freight moving between terminals on my line that is not moved on equipment licensed in my name.

Q. How much do you own?

A. Is it acquired under a contract with the finance company, is it mortgaged or under lease? What is your definition of ownership? Under the law the title resides in my name on every piece of equipment I move between terminals.

Q. From whom do you lease equipment?

A. Every Monday morning I get 12 pieces from Metropolitan Distributors, that we talked about this morning. He started as an owner-operator. That is his business.

Q. You understand the difference between that and ownership, don't you?

A. That is equipment leased to me, manned by me, and operated in the city.

[fol. 2904] Q. I will ask you how much you own yourself?

A. Every piece of road equipment I run is titled in my name.

Q. That isn't what I asked.

Mr. Idol: I suggest further pursuance of this line of inquiry will be of no assistance in disposing of this case.

Mr. Burton Wheeler: There is a vast difference between ownership and leased property. You understand that perfectly well, Mr. Sutherland.

By Mr. Burton Wheeler:

Q. How much of it do you own and how much do you lease if you own any of it?

A. All of it.

By Mr. Burton Wheeler:

You own it all?

A. For responsibility purposes, I own it all.

Q. That isn't the question. You are quibbling.

A. I am not quibbling. No, I am not quibbling.

Q. I am not asking about ownership for responsibility. You understand perfectly well when you lease a piece of property for a period of time that you don't own that property. You understand that, don't you?

A. No, I don't, because the laws of the seven States that I do business in say when I lease a piece of property for three months, or more, I own it under the titling of that State. Do you mean have the complete equity in it and nobody else has any equity in it?

[fol. 2905] Q. No. You understand what I mean perfectly well. I am asking how much property and equipment you own yourself. I am not asking what you lease but what you own yourself.

A. I don't know.

Q. How long have you been in business?

A. Since 1930.

Q. And you don't know how much property belongs to you and how much you lease?

A. I don't know.

Q. You don't own any property to amount to anything, yourself?

A. Have you a copy of my operating statement as filed with this Commission?

Q. Yes, I have.

A. Then, you can answer your own question. It shows tangible property, several hundred thousand dollars of it.

Q. I am asking you for the fact.

Mr. Idol: Mr. Examiner, I object to further examination along this line, and I request a ruling.

Exam. Lawton: I think this is getting into argument.

Mr. Todd: Mr. Examiner, while there is a little lull, is this going to be the last witness today?

Exam. Lawton: I presume it will be.

Mr. Burton Wheeler: Is this witness going to be available tomorrow?

Exam. Lawton: Has everybody completed their cross-[fol. 2906] examination?

Mr. Ellis: I have not.

Mr. Diehl: I have only a few questions, a couple of questions. We still have 20 minutes left of the normal working day. My people are here and expecting to start tomorrow morning.

Mr. Burton Wheeler: I think I could shorten my cross-examination if I go over until tomorrow morning. The reason for it mainly is this: That I have not been able to attend all of these hearings because I was tied up in hearings before the F.C.C. during the time we were in St. Louis, and it has only been in the last day that I have had a chance to even examine his testimony.

I didn't know he was coming on today and I would like an opportunity to reexamine his testimony and I think it would shorten the examination very much if I was able to do that this evening.

Mr. Idol: I object to that. It has been some three weeks since the witness was on the stand, and it seems to me counsel should have had time to prepare themselves for examination.

Mr. Burton Wheeler: I may not have any further cross-examination in the morning, but I do want an opportunity possibly to ask a few questions in the morning that I have not had a chance to refresh my memory with reference to his testimony because of the fact that I have been tied up in hearings before the F.C.C. during this period of time. [fol. 2907] Exam. Lawton: You will be here in the morning and you will know by that time if you desire to cross-examine further? Make your request and if it is reasonable it probably can be granted.

Does anyone else have anything?

Mr. Diehl: I have a couple of questions and I believe Mr. Lordan has a couple.

By Mr. Diehl:

Q. Senator Wheeler asked you, Mr. Witness, about the passage of the Motor Carrier Act of 1935 and the reasons for it, and so forth. Do you recall?

A. Yes, sir.

Q. Do you recall the business conditions and industry in general in the few months and couple of years preceding the passage of this Act that he spoke of?

A. I do.

Q. What is your thought with respect to the condition of the industry at that time as compared to industry today?

A. It is considerably better today. There isn't any comparison.

Q. Perhaps for the record you had better say what you mean by that.

A. Business is so much better today that everybody knows that it was in the doldrums at that time. That was not long after the bank holiday when nobody could get a dime any place.

Q. Do you happen to know what the number of trucks are that are owned and operated by most of the holders of [fol. 2908] authority that have been issued by the Interstate Commerce Commission in the United States?

A. No, I don't.

Q. Have you heard any A.T.A. estimates that 80 percent of the holders of authority from the Commission operate two to three vehicles?

A. Yes, I have heard that.

Q. Would you say that those people have any great advantages as large purchasers of gasoline and tires, and so forth, over a man who owns and operates his own equipment and leases it to you?

A. No, their purchasing power would be about the same.

Q. Did you testify as to how many of the meetings of your committee were attended by Mr. C. J. Williams?

A. I don't believe I testified. It seems to me he attended all the sessions except the last two and a part of the third from the last. He arrived late at the hearing we held in Chicago, and he did not attend either of the two general sessions after that.

Q. How many general sessions did you hold?

A. I guess six or seven altogether.

Q. Do you know how many regional meetings Mr. Williams attended?

A. Three, I guess, to my knowledge he attended three.

Q. How many regional meetings were held throughout the country?

[fol. 2909] A. Fourteen. However, they were allocated to different members of the committee so we all would not have to travel on every trip.

Q. If Mr. Williams testified in St. Louis he only attended two regional meetings, would you say that is correct?

A. I think possibly he is not referring to the fourteenth. We held one big meeting in Chicago and because of the interest that came out of it we scheduled 13 others. He might have referred to that.

Q. Can you tell whether or not any evidence brought to the attention of the committee ever changed Mr. Williams' position, or is the position he takes now exactly what it was when it started?

A. It is exactly the same.

Q. Do you know anything about his business or his association with you in the A.T.A. that would indicate that is a new position with him, or has he maintained that position for a number of years?

A. It has been his position ever since I have known him.

Q. How long have you known him?

A. Twelve or thirteen years, or maybe longer.

Q. Did your company, speaking now as an individual for your own company, have insurance on file with the Interstate Commerce Commission, as required, do you know?

[fol. 2910-2913] A. That is right.

Q. Is your insurance premium higher than other carriers in your area because you engage these owner-operators?

A. Not to my knowledge.

Q. Is your rate level on a general level with other carriers with whom you are competing in your area?

A. It is.

Q. Do you know of any practices in your own company through the use of owner-operators that have tended to break down the rate structure in your area?

A. No.

Exam. Lawton: We will adjourn until 9:30 tomorrow morning.

(Whereupon, at 4:45 p. m., the hearing was adjourned until Wednesday, December 15, 1948, at 9:30 a. m.)

[fol. 2914] Proceedings—December 15, 1948

Exam. Lawton: Come to order, please. We will resume the hearing.

Mr. Ellis: Mr. Examiner, before any testimony is taken may I call your attention to a matter, please, sir?

Exam. Lawton: Yes, sir.

Mr. Ellis: At the St. Louis hearing, when Mr. Gotfredson was on the stand, Mr. Wheeler, in cross-examining him, asked for a breakdown of information concerning the number of employees assigned to each of the company's terminals, and the number of pieces of equipment regularly assigned that the company owned at each terminal. We agreed to furnish that information at the Washington hearing with the understanding a witness would not be present.

I have this morning furnished a copy to Senator Wheeler, and have other copies available at present, and I would like to have these two papers marked as exhibits in this case.

Exam. Lawton: As two separate exhibits, Mr. Ellis?

Mr. Ellis: Yes, sir.

Exam. Lawton: The one headed "Trans-American Employees, December, 1948," will be identified as Exhibit 34, and the one headed "Trans-American Freight Lines, Record of Equipment, City and Highway," will be Exhibit 35.

If there is no objection, these exhibits will be received in evidence. They were called for by some of the counsel and [fol. 2915] it was understood that they would be offered at this hearing.

(Respondents' Exhibits Nos. 34 and 35, Counsel Ellis, were received in evidence.)

D. L. SUTHERLAND testified further as follows:

Cross-Examination (Resumed).

By Mr. Burton Wheeler:

Q. Mr. Sutherland, you probably answered this question when I was not here: How long has your company been in existence?

A. It was incorporated in 1936. I started doing business as an individual in 1931.

Q. What was the capital stock of your company? What was it incorporated for?

A. $1,500, as I remember, paid-in capital; incorporated 200 shares of non-par capital stock.

Q. Who were the stockholders?

A. F. G. Palmer and myself.

Q. You stated yesterday that you leased some of your trucks and some you leased from the company in New York, the Metropolitan.

A. That is right.

Q. From whom do you rent the others?

A. From various people. I might be able to shorten this a little by telling what our policy is.

In September of 1945, after VJ-Day, the end of hostilities, we embarked upon a policy to get out of the garage business and stop owning our own vehicles and maintaining [fol. 2916] our own vehicles. We have not quite completed that, but we have practically completed it, and it is the company's policy not to own any more company equipment outright. Our equipment is leased from various individuals, a few from owner-drivers who drive themselves, many from people who buy the equipment as an investment and hold title to it and lease the equipment to us. They are all on long-term lease, painted with our name, manned by our employees, and we hold title to it.

Q. When you lease from the drivers themselves, you stated yesterday that was a question between the driver and yourself, depending on the contract you entered into.

A. That is right.

Q. Do you have the same kind of a contract for each one of these driver-owners that you have, or do you have different ones?

A. If you are confining it to driver-owners, the answer is "yes," we have a standard contract for driver-owners.

Q. When you enter into a contract with a driver-owner, the driver belongs, does it not, to the union?

A. Yes, sir; all union members.

Q. Do you make the contract with them, then, at that time when somebody representing the union is present?

A. No, the contract is for the chattel and has nothing to do with the working conditions or wages.

Q. That is what I want to get at. Some people call the employee himself a chattel.

[fol. 2917] A. I don't.

Q. When you enter into the contract with the driver-owner, you make your contract for the truck and then you pay him the wage scale; is that correct?

A. That is right; yes, sir.

Q. For what length of time do you enter into the contract with the driver-owner for the use of that truck?

A. It is a continuing form of contract, usually for the basis of one year for licensing purposes, but it automatically renews itself. The actual rates to be paid under the contract are adjustable at six months' intervals as of a separate schedule and part of the contract.

Q. What do you pay for the use of that truck and what are the conditions—

Mr. Idol: I object to further testimony along this line. There is no evidence in this record of any abuse in connection with long-term agreements. There is no point that I can see in further pursuing the line of testimony in connection with long-term agreements.

Exam. Lawton: The subject has been opened up. He may answer. Overruled.

The Witness: The basis of compensation for the truck is on a ton-mile basis. The equipment is to be used by us in the same manner—and I think these are the exact words—as if we owned it. We can do anything we want to do [fol. 2918] with it. It is paid a minimum weight regardless

of whether it has any weight on it or not, regardless of where we dispatch it, and if it carries more weight it is paid on a hundredweight basis, so much a ton, over and above the minimum.

Q. Can you furnish a copy of that contract?

A. I don't have it with me, but I can furnish it.

Q. Yesterday you seemed to have some difficulty in understanding what I meant by the term "owned." You stated you wanted to have a definition of just what I meant by the term "owned." I find in looking at your statement —well, let me ask you this: You conduct at the present time the same as you did in 1947, do you not, on the same basis?

A. There have been some changes. I told you we embarked on a program of getting out of the garage business and getting away from company-owned equipment. I don't know what stage of that development we were in at the time the figures were filed.

Q. On page 14 of your report to the I.C.C. it showed in 1947 it showed that in 1947 you owned one Chevrolet 1939 truck, a value of $628, and that was all it showed that you owned in the way of trucks. So you didn't have any difficulty in understanding what was meant by ownership—

A. I think we still have to get to that, Senator. I still want you to define what you mean by ownership.

When I have a vehicle in my name, and licensed in my name, that constitutes ownership under the laws of the [fol. 2919] States that we do business in.

Q. I was asking you whether or not you owned any trucks and I say you didn't have any difficulty in saying what you owned in your report to the I.C.C. because you showed that you owned one Chevrolet truck, a 1939 model. That cost you put at $628; and the annual depreciation of 33 1/3, and the year it was placed in service was in 1941. That is correct, is it not?

A. If that is what the accountant put in there, I assume he knew what he was talking about. I didn't do it.

Q. Now, on page 49 of your income statement furnished to the I.C.C., owning only one truck of your own, your gross revenues were $2,308,678, and your net after income taxes was $108,705. It that correct?

Mr. Idol: I object to that. It is entirely irrelevant to the issues in this case.

The Witness: It speaks for itself.

Exam. Lawton: It shows it was a very profitable operation.

By Mr. Burton Wheeler:

Q. As a matter of fact, yesterday you said you felt the I.C.C. ought to take up these matters in a rate hearing rather than in this hearing with reference to some of the abuses that were complained about with reference to trip leases and so forth. Did I understand you at that time to say or indicate that you thought the rates that were being now permitted by the I.C.C. were too low in many instances?

[fol. 2920] A. No, I don't think I said that. I did say this—

Q. I gathered that from your statement. Maybe I was wrong.

A. I did say this, and I think this will make crystal clear what I was talking about: That when a rate such as Mr. Markowitz described yesterday, which is normally a fifth class rate, his standard rate, and in his short-haul territory that fifth class rate would probably be in the neighborhood of 25 cents, and when the Commission has before it a proposal of a carrier to put in a rate of 17 cents—the Commission has before it the proposal to institute a rate from 25 cents down to 17 cents in the territory—that is the proper place to find out whether or not there is an abuse in that rate. The abuse does not come from the leasing. The abuse comes because the rate was cut.

Q. But the rate may have been cut because of the trip leasing, may it not?

A. That is very true.

Q. Because of the exploitation of the—

A. Let's admit for your purpose that is 100 percent correct, that the man was being badly exploited, he couldn't make any money at all, and he was going to go broke, lose his investment, never have a place to sleep, all the abuses ever heard about were in that situation. The industry was affected because the carrier went in and predicated a rate on that cost and the Commission allowed him to do so.

[fol. 2921] Q. Not only is the industry affected but it tended to show there was a breaking down of the whole transportation structure, and, as Mr. Markowitz said, "If that is legal and proper I want to know because we went into this business," and apparently you went into the business, entirely though a leasing operation or because you felt it was more profitable, didn't you?

A. No, that is not the reason.

Q. What was the reason?

A. There are two good reasons. In the first place, our equipment during the war was dedicated almost entirely to the Army and Navy for the use of United Aircraft Corporation.

The same records you have before you will show we lost $168,000 in the last three years of the war. We had 48 pieces of equipment from the Defense Plants Corporation that were utilized in addition to what equipment we had ourselves. At the end of hostilities we were faced within 30 days with making a decision of whether or not we were going to turn that equipment back to the Defense Plants Corporation or we were going to buy it. We had lost every dime we had in the business trying to keep the war effort going.

We made our contribution and are not complaining about it at all. I myself, although a trained transportation man, brought up in the railroads, and I was assistant traffic manager of Dodge Brothers—I was spending 95 percent of my time running a garage that I knew nothing about, and [fol. 2922] I never had any training for the garage business.

I was spending 95 percent of my time and effort trying to run a new business I knew nothing about, leaving 5 percent of my time available for the job I was trained to do. I was faced with the necessity of getting additional customers to build up this business again because all our business during the war, at the request of the military, had been placed in one basket. I was broke, if you please.

So I adopted the only out that I could see, and that was to turn some of my capital assets which were vehicles into cash and utilize that cash to develop the business I had sacrificed to the war effort, and, at the same time, relieve

me of 95 percent of my detail, which was something I knew about, so I could direct the rest of it.

I sold the capital assets and I proceeded to set up a transportation business and run it as a transportation man, and I got out of the garage business and the records you have there speak for themselves. That is 1947. I am talking about 1945. That is the reason I did it, not because of any cheaper proposition.

Q. As a matter of fact, you say you lost money when you were running your garage?

A. Sure, because the rates were so low, because I couldn't possibly make out on them.

Q. What percentage of your operating equipment is [fol. 2923] leased from your drivers, would you say?

A. I think I am right when I say there are 26 units out of 118. That is an approximation, and I don't want to be held to that as an actual figure. I think 26 out of 118 units are driver-owned.

Q. During 1947 you had approximately an average of around 93 units, did you not?

A. That is right, something like that. We are considerably above that now.

Q. The compensation and the method that is used are always the same, as between whether you get them from the driver-owners—

Exam. Lawton: He has already answered that.

The Witness: The driver-owner contract is a standard contract; yes, sir.

By Mr. Burton Wheeler:

Q. When you get it from the driver-owner do you pay the same compensation to him for his truck that you pay to the other group, Metropolitan or whatever—

A. Actually we pay the driver-owner on a mileage basis exactly the same as we pay Metropolitan Distributors, or any other—

Q. Will you also furnish us a copy of that contract?

A. Yes, we will give you that.

Q. Who insures the trucks for the owner-drivers?

A. What kind of insurance?

Q. I mean for fire, theft, and collision?

A. Fire, theft, and collision he carries himself. The lessor [fol. 2924] carries fire, theft, and collision.

Exam. Lawton: What about public liability?

The Witness: Public liability and property damage are our responsibility, and we carry that, and cover him in case anyone tries to show he has a joint responsibility. We insist the policy be endorsed to cover both him and ourselves.

By Mr. Burton Wheeler:

Q. I notice in your statement you have among other items "Earnings from insurance, fire, theft, and collision, negotiated for equipment lessor, $10,881."

A. What we did was negotiate a blanket policy for those men and we put into our safety campaign an accident-free bonus. We set accidents up in four different brackets, one in which there was no negligence on the part of the drivers, one with contributory negligence, and another group gross negligence. That money was what we saved by getting a group insurance policy as against what they would have to pay for an individual policy, and we utilized that money as bonuses on this safety record and we reduced accidents.

Q. So you got a group policy for all your people and you made a profit on that over what they would have to pay—

A. That is not true. I said it went into a pool administered by themselves. We did the bookkeeping.

Q. It shows a profit of $10,000 over what they would have paid. You saved $10,000 over what they would have had to pay.

Mr. Idol: I object to that.

[fol. 2925] Exam. Lawton: I think there is already enough on that.

The Witness: Well, I answered categorically on that, and the answer is "No."

By Mr. Burton Wheeler:

Q. The record shows for itself?

A. Let's take the whole record, and not one item.

Q. On page 52 of your Schedule 4000, furnished to the I.C.C. in 1947, transportation expense under the subdivision

4,200, drivers and helpers' wages and bonuses, you have listed nothing. How do you account for that?

A. I don't know.

[fol. 2926] Exam. Lawton: Can you answer that apparent discrepancy?

The Witness: I wouldn't know what account he is looking at. I wouldn't know it if I saw it. I don't know what accounts certain things are to be put in.

I have an accountant. I know we paid the wages separately 100 percent, and they are not even talked about in the contract.

By Mr. Burton Wheeler:

Q. Let me show it to ou.

[fol. 2927] A. I don't know if they asked for them to be grouped in the accounting rules and put under one charge. They are all paid separately. I have owners leasing equipment to me that live in Mexico City. How can they have anything for anything but leased equipment.

A deputy police commissioner of a big city has eight pieces of equipment working for me as an investment. I assure you he doesn't drive them, and I have to pay the drivers of those vehicles, and I pay them all that way. They were paid separately.

If the accounting rules of the Commission require that the wages be grouped together as transportation expenses, they would be grouped together. I am not familiar with them.

Exam. Lawton: I think there has been enough of that.

Mr. Burton Wheeler: I desire to make this offer of proof: On page 52 of the report of 1947—

[fol. 2928] Page 52, 4,200, transportation expenses, supervision of transportation, $2,373; 4,220, drivers and helpers wages and bonuses, fuel for revenue equipment; 4,240, oil for revenue equipment blank; 4,250, purchased transporta-

[fol. 2929] tion intercity, $1,377,523; 4,255, purchased transportation, local, blank; road expense, blank; bridge, tunnel, and ferry tolls, blank; other transportation, blank; total $1,397,898. That is all.

Exam. Lawton: Have you seen that, Mr. Sutherland?

The Witness: No, I have never seen it. It is prepared by a certified public accountant under the rules of the Commission.

Exam. Lawton: You don't question it in any way? It is a report of your company?

The Witness: He says it is. I don't know.

Mr. Ellis: I now move to strike from the record this statement because you cannot make an offer of proof on cross-examination, an offer to prove a matter which was not even remotely gone into on direct examination.

Mr. Burton Wheeler: I never in my life—

Exam. Lawton: No more argument. Motion to strike denied.

Who else desires to interrogate?

Mr. Lordan: I have a few questions.

By Mr. Lordan:

Q. Mr. Sutherland, after some discussion with Commission counsel I was asked to ask you certain questions with relation to your idea of what constitutes ownership of equipment.

Mr. Sutherland, why does your company take title from your owner-operators for the purposes of your operation?

A. The State laws require it. Connecticut does, Michigan [fol. 2930] does, New York does, I am not too sure of some of the others, but those four of the seven I do business in. Their definition of ownership includes any vehicle leased for three months or more, and we lease longer than three months. Therefore, we must have title in our mind.

We are a New York corporation subject to New York law, and because our lease is for more than three months the certificate of title is in our name.

Q. Is there any benefit in relation to taxes that motivates you in that connection?

Mr. Idol: That certainly has no place in the record. It is extraneous and not covered by direct examination. The reason for the titling has been given clearly.

Mr. Lordan: I am trying to be very careful about this situation. I am inquiring whether there is an additional

reason than the one he outlined. If that is all, he can say so.

The Witness: There is no additional reason.

By Mr. Lordan:

Q. Mr. Sutherland, who would take the title in the event of your company's bankruptcy?

Mr. Idol: Mr. Examiner, I object. It calls for a legal conclusion.

Exam. Lawton: Sustained.

By Mr. Lordan:

Q. Whose assets are the trucks that are operated by you?

Mr. Idol: I object to that. The status of the trucks has [fol. 2931] been clearly explained. This is cumulative.

Exam. Lawton: Sustained.

By Mr. Lordan:

Q. If you are the registered owner, the one who holds the title to the equipment under the State law for the purpose of use, as you have explained, would the proposed regulations of the Interstate Commerce Commission affect such an operation?

A. Not at all.

Q. Would the proposed regulations apply to the legal owners thereof?

A. No.

Q. Were they intended to?

A. No, not in my opinion. I don't know what the Commission intended.

Mr. Idol: We are getting a lot of opinion evidence and questions asking for opinions.

Mr. Wells: For clarity, may I ask whether when you use the term "proposed regulations," you are referring to the proposal of the A.T.A.?

The Witness: He said Commission's proposal.

Mr. Idol: You understand there are four Commission proposals here?

Exam. Lawton: Yes.

Mr. Lordan: The witness is entitled to explain what he thinks the situation is.

[fol. 2932] By Mr. Lordan:

Q. Are the regulations imposed by the American Trucking Association intended to establish who is the owner of the vehicle?

A. They have no effect at all.

Q. Is it true, Mr. Sutherland, that the industry does not desire any farming out of rights?

A. Very true.

Q. Those are all the questions I was asked to inquire about. Now, I have a few of my own.

Mr. Sutherland, you discussed yesterday the fact that there was a regional meeting in connection with your committee at Portland, Ore.

A. That is true.

Q. And I think you stated, if I recall you correctly, that about one-half the operators in the Portland territory, or in the Pacific Northwest, were in favor of trip leasing, and about 50 percent were not.

A. That is my understanding.

Q. Mr. Lilienquist, of your committee, presided at this meeting?

A. I think that is true.

Q. And with Mr. Boot held the meeting?

A. Yes.

Q. Was it not at that meeting unanimously agreed and recommended, Mr. Sutherland, by the people in attendance at the meeting, the carriers in attendance, that, No. 1, the [fol. 2933] lessee carrier should accept the driver of his vehicle as his employee in all instances?

A. I can't recall whether that was part of their report to the committee, or not. We did get that from different parties.

Q. At the time of the regional meeting, the regional report of the American Trucking Association's Leasing Committee had not yet been formulated?

A. Oh, no.

Q. And only report No. 2 was in possession of the carriers for discussion?

A. That is right.

Q. One of the provisions of that report No. 2 provided that the lessee carrier should accept the driver of this vehicle as his employee or agent, did it not?

A. Read the first paragraph of the No. 2 report, the part that is italicized. Let us get that clear and I will answer the question.

Q. "It is emphasized that this report does not reflect any action taken by the committee, as such, but is merely a summation of what the committee believes to be the thoughts of the industry."

A. It was thrown out for discussion. It had no point except it was thrown out for discussion.

Q. There is no thought in my question that it was a suggestion of the committee to the industry—

[fol. 2934] A. That is right.

Q. But in the summation which was before the regional meeting for discussion—

A. They had that as one of the topics for consideration.

Q. One of the provisions that was before that industry group for determination was whether or not the lessee carrier should accept the driver of the vehicle as its employee or agent?

A. I think that was before all meetings at all times.

Q. I only want to inquire about the Pacific Northwest meeting.

A. I don't know anything about it. I was not there. I can only give you thirdhand information on what happened.

Exam. Lawton: He doesn't know.

By Mr. Lordan:

Q. Was it reported to you, Mr. Sutherland, that the Pacific Northwest group, in consideration of that item, struck the words "or agent," and it was their recommendation those words be eliminated?

A. I don't recall it. It is possible it might have been reported.

Q. Did the Pacific Northwest meeting likewise, Mr. Sutherland, if it was reported to you by Mr. Boot or Mr. Lilien-

quest, recommend that no leases be permitted to be entered into for less than a ten-day period?

A. That same from several different places. It is possible it was in that report. I don't know.

Q. Mr. Lilienquist was one of the members that you gave [fol. 2935] to Senator Wheeler yesterday?

A. Oh, yes, he is a member of our committee.

Q. He is one of the common carrier regular route operators?

A. And he voted for the final report regardless of what was in the No. 2 suggested report.

Q. May I inquire, Mr. Sutherland, whether or not the membership of the American Trucking Association, or whether its component parts, require that the carrier be engaged in interstate commerce in any way?

A. No.

Q. A great many of the carriers who belong to the individual associations are purely intrastate carriers?

A. I think that would be a fair statement, yes.

Q. Were the questionnaires sent indiscriminately by your committee or group to carriers who operate in inter and intrastate commerce, or merely to the intrastate carriers?

A. They were sent to everybody, a very wide distribution.

Q. Mr. Sutherland, will you please give me after your study, and as the chairman of this committee, your idea of the type of showing that an applicant should be required to make to this Commission before being granted a certificate of public convenience and necessity?

Mr. Idol: I object to that.

Mr. Lordan: I at least should have the courtesy to be allowed to finish my question.

[fol. 2936] Exam. Lawton: Finish your question.

By Mr. Lordan:

Q. To serve in a territory already being served by existing certificate holders?

Mr. Idol: I now renew my objection.

Exam. Lawton: Objection sustained. Can't we get away from these extraneous and immaterial matters?

Mr. Lordan: This is a preliminary question. I desire to inquire with relation to certain preliminary matters before I ask the question that I desire to ask in connection with this matter.

I point out to the Examiner, and I recall very specifically the testimony, that other testimony has gone in this record, particularly by Mr. Garrett in this connection, that in case these practices continue the ultimate answer in connection with this situation is that new certificate applicants will be entitled or might be feared to be entitled to be permitted by the Commission to have additional rights in connection with this matter. That is all in the record.

I think I have a right to inquire, sir, certainly as a preliminary matter, and if ultimately the testimony which I feel that this witness and I might develop is decided by you to be irrelevant and improper in connection with this, certainly you have a right to have it stricken from the record.

Exam. Lawton: Let me see if I understand. The point of this interrogation is that if certain types of leasing are [fol. 2937] prohibited, what a carrier would have to show to obtain his certificate of convenience and necessity. There isn't clear yet that any particular practice is going to be prohibited. It might be subject to regulation.

Mr. Lordan: I will withdraw that question and ask another.

By Mr. Lordan:

Q. Is it your opinion, Mr. Sutherland, that public convenience and necessity under the Transportation Act, and under Part II of the Interstate Commerce Act, is being served by a carrier or a group of carriers who are not able to furnish the necessary equipment to meet the normal demands of your shippers who wish to utilize their service?

Mr. Idol: I object, Mr. Examiner.

Exam. Lawton: Objection sustained. I don't want to hear any more about that.

By Mr. Lordan:

Q. I will ask another question, Mr. Sutherland, hypothetical in nature, along the same line:

If objection is sustained to this question I will withdraw from that particular line of inquiry and ask for an exception to be noted in the record.

Exam. Lawton: Exceptions are allowed to all adverse rulings.

By Mr. Lordan:

Q. As the chairman of this committee who has studied this problem from all its various implications, as I understand your direct testimony, I will ask you a hypothetical question:

Let us assume for the purpose of my question that we [fol. 2938] have an operator, for example, who operates between Los Angeles and Seattle, and that the demands of his shippers between those points require the utilization of 75 trucks in regular service, and that that operator will or can only supply 25 vehicles, and the rest he obtains from trip lease operators. Is it your opinion, and did your committee give any consideration to the study as to whether or not that man would be justified in holding that certificate, or that the Commission should under those circumstances be required to issue an additional certificate?

Exam. Lawton: Read that question.

Mr. Idol: I again object, Mr. Examiner.

(Question read.)

Exam. Lawton: Objection sustained.

By Mr. Lordan:

Q. Mr. Sutherland, you heard Mr. Blanning's testimony the first day of the proceeding?

A. A portion of it, not all.

Q. Did you read his prepared statement?

A. No, I have not.

Q. There is a letter quoted in Mr. Blanning's prepared statement, Mr. Sutherland—

A. I am familiar with that letter. The committee had it and discussed the subject matter of it.

Q. Which provides in part: "The situation in that city is such that the hired operators are at a premium and almost

every transportation company would be crippled without their service." Did your committee find that generally [fol. 2939] true?

Mr. Ellis: To which we object. Mr. Blanning, on my question, failed and refused to disclose who it was, where it was, or any of the facts or circumstances involved.

To ask this witness who has never seen the letter, in view of Mr. Blanning's failure to disclose the circumstances and facts, is highly improper.

Mr. Lordan: I am asking whether or not the situation is generally true, in view of his committee's investigation.

The Witness: We find there are many places in the United States where the industry depends upon a pool of so-called itinerant truckmen to take care of peak situations.

By Mr. Lordan:

Q. Also in Exhibit 2, on page 2, under the general heading, "Summary of Conditions Reported," there is the statement by Mr. Blanning, or by the Bureau: "Some of the carriers own no equipment and depend entirely on other persons to supply the vehicles for the transportation which they are authorized to perform."

Did your committee in its examination and study of this problem find that situation generally prevalent in the motor carrier business in the United States?

A. I think generally prevalent is quite a broad term. Undoubtedly quite a few carriers are in that category. We only went into the subject of procuring vehicles by lease. This was a leasing committee and a leasing hearing. The method by which they procured the truck didn't seem to [fol. 2940] be very important to us. It is the use and not the procurement of the vehicle that constitutes abuses.

Q. Take the instance of a certificate holder who utilizes wholly or in great part the services of leased operators on a division of revenue basis.

Let me ask you this: Woudl his report to the Interstate Commerce Commission reflect the true and accurate costs of operating equipment?

A. I am not familiar with the accounting rules of the Commission and it is quite evident from what the Senator said a while ago that they require for accounting purposes the combining of different accounts that carriers may keep separately. I don't know whether their report would reflect the costs or not. The Commission would have to answer that question. I can't.

Q. Mr. Sutherland, if there were lower operating costs shown as a result of such practices, wouldn't there be a tendency to reduce the rate structure?

A. We didn't find much of it. Before I got into this leasing practice I suspected it was more prevalent than it turned out to be. You have some evidence before you that it does exist in some cases. We found some evidence that it did exist in some cases.

Q. Was it the experience of your committee that when the rate structures of the motor carriers in a given territory, or in a given area, and on a given route, are de-[fol. 2941] pressed, that the rail rates were immediately depressed to meet the same competitive situation?

Mr. Idol: Object, Mr. Examiner.

The Witness: It is not true.

By Mr. Lordan:

Q. It is not generally true?

A. We did not find it at all.

Q. And your experience as an operator does not lend you to that conclusion?

A. Not a particle.

Q. Mr. Sutherland, why do you in your operation consider it necessary *to* advisable to put the drivers of your leased equipment upon your own pay roll?

A. Because they are my own employees and I have no other choice. They are my employees. I have to put them on my pay roll.

Q. Do you feel that by such practice in the instance of an owner-operator you have better control over the owner-operator?

A. No. It does not make a particle of difference, as I see it.

Q. Your committee did not recommend to the Commission, did it, Mr. Sutherland, that the drivers of leased vehicles be upon the pay roll of the operating company?

A. No, it did not.

Q. Did your committee, Mr. Sutherland, give consideration to the fact that a pay roll is generally considered as an additional means of checking the service of an employee as a factor in determining his hours of duty?

[fol. 2942] A. No, the Commission prescribed the method to be kept, and we think they should be adequately kept in that manner. Invasion of managerial discretion is not necessary on the part of the Commission in order to properly police their own safety rules. They prescribe the rules and the method ought to be followed.

Q. Is it your thought that a pay roll might be under some circumstances a more accurate method of determining the driver's employment than the log?

A. It should not be.

Q. A pay roll ought to be, and usually is, audited and checked by a great many agencies or auditing groups for different purposes, may it not, Mr. Sutherland?

A. Yes, that is true.

Q. Would you not agree with me that auditing of a pay roll was the more accurate way of determining the hours of service?

A. I would not agree with you.

Mr. Idol: I object. It has nothing to do with it.

Exam. Lawton: It has already been asked and answered.

By Mr. Lordan:

Q. What is your opinion, and the opinion of your committee as a result of your study and as a result of the report to the American Trucking Association, about the present accuracy of the drivers' logs and their reliability in order to determine the hours of service of employees?

A. I think that could best be answered that the drivers' log would be as reliable as the man who makes it out. [fol. 2943] Human nature being what it is, take the law of averages.

Q. Did your committee give any consideration to setting

up any safeguard by which that driver's log may be compared or audited or checked with any other document?

A. We did not give any consideration to a standard plan. We recognize that the carrier has imposed on him by law, or right at this moment, the necessity of setting up in his own business a suitable method of checking and if he does not do so he is subject to prosecution by this Commission. The method he uses is managerial discretion.

Q. I was speaking with relation to a possible audit on behalf of the regulatory body. Is there any way by which a regulatory body can come into the offices and take records of one of its certificate holders and by an examination of the bare log determine the accuracy of it?

A. Yes, they have their methods evidently. They do it all the time.

Q. If that particular driver happened to be an employee of a certificate holder, Mr. Sutherland, it would be possible under those circumstances to check and audit the driver's log against the pay roll, would it not?

A. It would be possible, yes.

Q. Would that, in your opinion, and in the opinion of your committee, as a result of your study, give any additional safeguard to a determination of the accuracy of the [fol. 2944] drivers' logs?

A. No. The committee did not discuss it at all but I say no unhesitatingly, because the Commission does not seem to think it necessary, they have not instructed their men to do so, they use other methods of checking logs. We did not consider it as a committee at all. The log, of course, speaks for itself.

Q. You were here yesterday during the testimony of Mr. Markowitz?

A. Part of it, yes.

Q. Did you hear Mr. Markowitz testify with relation to subject 6 of his Exhibit 31 entitled "Lease and Interchange of Vehicles by Motor Carriers," in the discussion of which he testified that the guiding principle in determining the advisability of leasing by carriers was entirely the profit which was obtained by the certificate holder?

A. I heard some testimony along that line. I don't remember exactly what it was.

Q. Let me ask you, Mr. Sutherland, whether you agree or disagree with Mr. Markowitz' statement in that regard.

A. I would like to have his statement before I can tell you that.

Exam. Lawton: Here it is. Take your time and read it. You are referring to subject 6?

Mr. Lordan: I am, and Mr. Markowitz' comments with regard to same which Mr. Sutherland heard, he being present in the hearing yesterday.

[fol. 2945] The Witness: Well, I think that Mr. Markowitz' No. 6 paragraph is 100 percent along the lines of the suggestions the committee makes, and the rules we suggested, and he underlines the last sentence in which he says it should be made a criminal offense to willfully fail to comply. We didn't go that far, but we state, and we very thoroughly believe that an operator should not be allowed to evade or avoid any of his responsibilities by acquiring the truck through lease, that he would have to assume if he acquired it through purchase.

The regulations should be 100 percent the same and the responsibilities of the carrier are the same whether he acquires it by lease or acquires it by purchase.

By Mr. Lordan:

Q. My question is directed towards Mr. Markowitz' comments with regard to his discussion of that subject in which he said that the main motivating principle in regard to governing a certificate holder's determination as to whether or not he should enter into a leasing operation of any kind is, of course, because of the profit that is obtained thereby.

A. I don't know why he confines that to leasing. That is true of any decision any business man makes in regard to his business. The profit motive is 100 percent behind any decision.

Exam. Lawton: He wouldn't go into it if he didn't think he would make a profit.

[fol. 2946] By Mr. Lordan:

Q. You mentioned several times on your cross-examination by Mr. Eldred about the right of a private contract

and the invasion of the private contract between the leased operator and the certificate holder. Do you recall your testimony generally?

A. I think generally the terms of any contracts outside of those required to protect public interest are the right of any individual between the two contracting parties.

Q. What is your opinion, Mr. Sutherland, as to the propriety of this Commission to invade that field by rule?

A. I think the Commission could issue any necessary rules regarding the field of interstate commerce which meet the test of reasonableness, and are not prohibited by law.

Q. Since the Washington hearing, and since you testified on direct testimony, Mr. Sutherland, did your committee or your company receive through the mail a statement entitled "Gypsy Operations and what they mean to the common carrier industry and to you"?

Mr. Idol: I object, Mr. Examiner.

Exam. Lawton: Sustained.

Mr. Lordan: Do I understand the Examiner will not permit me to inquire of this witness as to whether or not he received such document?

Exam. Lawton: You can put it in through some other witness if you want to. I think the man who wrote it is here and has been in attendance.

[fol. 2947] The Witness: Is that the one written by Mr. Adley?

By Mr. Lordan:

Q. It is.

A. I saw it; I received it.

Q. Do you agree with the factual statements expressed therein?

A. I can't whole-heartedly endorse everything he says, no.

Mr. Diehl: Can I ask if this is going to be an exhibit? If it is, could we have it now? We don't have copies.

Mr. Lordan: I have no further questions, Mr. Examiner.

Exam. Lawton: Does anyone else have any questions?

By Mr. Kittredge:

Q. Will you tell us under what laws your company is incorporated, in what State?

A. New York State.

Q. Where is your principal place of business?

A. Our headquarters, corporate headquarters, are in New York; my accounting and traffic departments are in Connecticut where I live.

Q. In what city?

A. New Britain.

Q. Do you consider that your principal place of business?

A. Yes. For incorporation, of course, our principal place of business is in New York.

Q. These driver-owner equipments which you operate is owned by persons domiciled in States other than in New York or Connecticut?

[fol. 2948] A. Oh, yes.

Q. Are there garages in those States?

A. We have no garages.

Q. Do you know where the vehicles are garaged when not in use?

A. They are not. They are in use. There are no garaging facilities at all.

Q. In whose name are those vehicles registered?

A. I said in the name of our company.

Q. Is that true in the State of Massachusetts?

A. All vehicles are registered in the State of New York because we are a New York corporation. They are registered in our name under the laws of the State of New York as required by the State of New York.

Q. Would you say none of the vehicles that are operated by your company, and owned by persons domiciled in Massachusetts, are registered in Massachusetts?

Mr. Idol: I object to further questions along this line. It is immaterial to the issues in this case.

Exam. Lawton: I think so.

Mr. Arraja: I would like to have one question, if I may have permission. I am sure it is not objectionable.

Exam. Lawton: Well, if no one else will, I will permit it.

By Mr. Arpaia:

Q. Strictly from an enforcement point of view, don't you agree that if the Commission should establish rules for the control of these trip leases, that if the standard uniform [fol. 2949] type of contract were used it would be more easily enforceable?

A. Mr. Arpaia, I think we have made ourselves quite clear on that point. We have given it exhaustive study. We have had before us a lot of different contracts. We are faced with the fact that the laws of 48 States differ on the subject of contracts. There cannot be a standard contract beyond minimum terms, and we have specified that any contract or agreement should contain those minimum terms.

Q. Without getting into that, but solely considered from an enforcement point of view, whether or not it would be practical for the Commission to enforce and obtain the objectives which it wants to obtain which could not be obtained if there were so many different forms of contract as there are owner-operators and certificate holders?

A. As I say, we think uniformity is quite desirable insofar as it is possible.

Exam. Lawton: You are excused.

(Witness excused.)

Exam. Lawton: We will take a five-minute recess.

(Short recess.)

Exam. Lawton: Come to order, please.

Are there any additional appearances to be entered?

Mr. Gault: P. F. Gault, Chicago and North Western Railway Company.

[fol. 2950] We have a witness here with a prepared statement, and if it is agreeable to the others present I should like to present him at this time.

Exam. Lawton: Have you passed out copies?

Mr. Gault: Yes, sir. As a matter of fact, it is another railroad statement. We have coordinated rail-motor service and it is quite similar to the other statements that have been presented in the record also.

Exam. Lawton: Look the statement over, gentlemen, and see if it is agreeable to have it copied in the record.

Are you going to ask the witness any questions?

Mr. Gault: I think he should take the stand, Mr. Examiner.

EMIL J. MUELLER was sworn and testified as follows:

Direct Examination.

By Mr. Gault:

Q. Please state your name and occupation for the record.

A. Emil J. Mueller. I am commerce assistant, Chicago and North Western Railway Company.

Q. You have been with that company for some time?

A. Yes, for 25 years.

Q. And except for the time in the armed services?

A. That is correct.

Q. At the present time you are in the commerce section and have to do primarily with motor rates and matters of that kind?

[fol. 2951] A. Motor carrier applications. I attend hearings in which the Chicago and North Western is interested, motor carrier applications, and also I am in charge of our motor vehicle operations from the traffic department angle.

Q. The Chicago and North Western Railway motor operations are entirely coordinated rail auxiliary service?

A. Yes.

Q. At rail rates?

A. Yes.

Q. Between railroad stations?

A. Between railroad stations.

Q. Carrying nothing on motor carrier rates; is that right?

A. That is right.

Q. Have you a prepared statement that you have made up yourself?

A. Yes, I have a statement.

Mr. Gault: If the Examiner please, we have this statement which has been distributed and I suggest that if it meets with the approval of the parties that it be put in the record as though read.

Exam. Lawton: Off the record.

(Discussion off the record.)

Exam. Lawton: Is there any objection to the statement being received as an exhibit?

(No response.)

[fol. 2952] Exam. Lawton: It will be identified as Exhibit 36.

(Respondents' Exhibit No. 36, Witness Mueller, was received in evidence.)

Cross-Examination.

By Mr. Todd:

Q. I would like to ask one question which might be covered in this exhibit, but reading it hurriedly I have not been able to determine.

In this rail-truck coordinated service, are the drivers who drive the motor vehicles employees of the railroad or of the contractor furnishing the vehicles?

A. They are employees of the person who furnishes the vehicles.

Mr. Gault: With one exception which is stated in there.

By Mr. Todd:

Q. What is that situation?

A. That is between Oral and Hot Springs, S. D. That was our first motor carrier application.

The rails were abandoned there by authority of the Commission and in that decision the Commission referred to Administrative Ruling 4 which provides in part as follows:

"The vehicle must be operated by persons who are em-

ployees of the authorized operator, that is to say, who stand in the relation of servant to him as master.'

Because of that reference to administrative ruling No. 4, the employees are C. & N. W. employees in that case.

Mr. Gault: They are carried on the agent's pay roll at Hot Springs?

[fol. 2953] The Witness: That is correct.

Mr. Gault: And that is an exception to our usual operation. Is that correct?

The Witness: That is correct.

Mr. Gault: That is all explained in this statement, it is not?

The Witness: Yes.

Mr. Gault: We have two operations which are not strictly speaking coordinated rail motor service. They are motor service to places where we used to have railroad service and the railroad was abandoned by authority of the Commission and we put in motor service.

The Witness: One is Deadwood-Lead and the other is Oral-Hot Springs, and the difference is that between Oral and Hot Springs we carry passengers and also freight.

By Mr. Todd:

Q. Do you know the union affiliations of the drivers who are the employees of the railroad itself?

A. No, I am not familiar with that.

By Mr. Pou:

Q. Who, then, sir, assumes the responsibility of seeing to it that these drivers comply with the Commission's hours of service regulations and its other safety provisions?

A. These operations are constantly under the supervision of our supervisors as well as our station agents all along the way. The operations are very short and they are constantly observed at each station. There is constant supervision of them.

[fol. 2954] Q. To be more specific, does the railroad company require these drivers to keep daily logs showing their hours of service?

A. There are logs kept.

Q. And with which company, your company or the rental company, are the logs filed, and by which are they retained?

A. The logs are filed with the rental company.

Q. Are they available there for inspection by the railroad employees?

A. Yes, they are.

Q. Is there any check made by the railroad as to whether or not the drivers are confining their hours as permitted by the Commission with reference to safety regulations?

A. By our supervisors. There isn't much danger of that on account of the type of operation we have, because of the short runs, and our drivers are never on longer than an eight-hour period because their service coincides with the railroad service and the station forces are on for that period.

Q. Breakdowns could considerably increase their hours of duty on a given day, couldn't they?

A. It is very closely supervised. I couldn't give you the exact detail.

Q. Does the railroad company report to the Commission as to whether or not any of these employees exceed the daily and weekly hours of service?

A. The rental companies report that.

[fol. 2955] Q. The rental companies are not registered by the Commission as the carrier and as the employees of these companies. You mean the rental company makes the report on behalf of the railroad company and in the railroad company's name?

A. That is my understanding. Of course, I explained they are constantly under our supervision. We have station agents and supervisors who observe this operation.

Q. I take it you are not entirely familiar with all these operations.

A. I am not an operating man.

Q. And what you have said in answer to my questions is based on what knowledge you have, but not complete knowledge?

A. That is right.

By Mr. Burton Wheeler:

Q. Who carries the insurance for accidents?

A. Insurance is carried both by the rental companies and the Chicago and North Western Railroad Company.

Mr. Gault: That is explained in the statement.

The Witness: That is explained in the statement.

Exam. Lawton: Is there anything further?

By Mr. Johnson:

Q. On page 11 of your statement you say it is the belief of the Chicago and North Western that railroad trucking operations might well be excepted from this investigation and from the application of the proposed rules promulgated by the Commission.

[fol. 2956] I take it that statement is made with reference to the preceding outline of the method by which you acquire equipment from this leasing company; is that correct?

A. I am not just quite clear what you—

Q. Let me put it this way: You feel the Chicago and North Western should be excepted because you feel that the method of operation which you have adopted does not contain the abuses which the Commission wishes to prevent; is that right?

A. That is right. I have made a study of those so-called abuses and I cannot see that we are in any way committing these abuses, and, in fact, I can't see under our operations how we could be committing such abuses.

Q: In view of that answer I would like to ask you this: Assuming that a motor carrier holding a certificate from the Interstate Commerce Commission obtains equipment by lease under an arrangement identical with the arrangement explained in your exhibit, would you then say that trucking company should also be excepted from the application of the rules?

A. It could not possibly be identical. It would be a purely motor vehicle operator.

Q. In what way is it different?

A. Because our services are from station to station; they move under railroad bill of lading. The motor vehicle operator has absolutely no contact with the shippers.

Q. Well, I am assuming that in the case of the certificated [fol. 2957] motor carrier when he leases equipment the person who operates leased equipment has no contact with the shipper, either. The billing is that of the motor carrier; isn't that correct?

A. It is entirely different because our service is from station to station.

Q. In what way is that different from a point-to-point operation by motor carrier?

A. He would necessarily contact the shippers. He would be delivering to the shippers.

Q. In other words, your railroad contacts the shippers?

A. That is right. We do all the solicitation.

Q. And in the case of the certificated motor carrier, it is the certificated motor carrier that contacts the shipper?

Exam. Lawton: I think that is something that could very well be argued on brief.

Mr. Gault: I would like to have the witness express his opinion, but the operations are so dissimilar, and we have stated the reasons why we think they are, and I think we are getting into a realm of speculation.

Mr. Johnson: If the witness is not familiar with the motor carrier end of the operation I will not question on that point.

Exam. Lawton: Is there anything further?

By Mr. Diehl:

Q. Does Chicago and North Western perform regular pick-up and delivery service at all points in connection with its rail service?

[fol. 2958] A. That is correct. That is authorized under section 1, and is no part of this hearing.

Q. Does it own or lease the equipment used in that pick-up and delivery service?

A. Yes.

Q. Which? Does it own or lease it?

A. It leases it.

Q. Are the employees who operate the equipment in the pick-up and delivery service employees of the railroad company or the leasing company?

A. I am not too familiar with that.

Mr. Gault: As a matter of fact, in pick-up and delivery they have a lot of independent contracts?

The Witness: Yes.

Mr. Gault: That comes under section 1 of the Interstate Commerce Act, does it not?

The Witness: Yes.

Mr. Gault: It is not a motor carrier operation?

The Witness: It is a rail operation.

Mr. Diehl: I am willing to accept Mr. Gault's explanation because I know he knows it, but whether or not it has anything to do with this investigation I am not willing to accept his opinion on it.

Exam. Lawton: No argument.

Mr. Diehl: Mr. Examiner, is this going to be an exhibit?

[fol. 2959] Exam. Lawton: Yes, Exhibit 36.

By Mr. Diehl;

Q. At page 11 of your Exhibit 36, you mentioned in the second paragraph that it is not an uncommon practice for the railroad company to lease all kinds of equipment, including its freight cars.

A. That is right.

Q. Can you tell me from your experience why there is any reason why the railroad companies should be allowed to interchange, lease, or otherwise arrange for their equipment in a fashion that the motor carriers certificated by the Interstate Commerce Commission are not allowed to do?

Mr. Gault: I object to that as calling for a conclusion of the witness on an entirely different subject than that to which he has testified.

Exam. Lawton: Read the question, please.

Mr. Gault: I want to add to the objection that it is assuming something that the witness stated that we don't interchange equipment with anybody.

Mr. Diehl: Mr. Gault, you don't mean the Chicago and North Western does not interchange equipment with other railroads?

Mr. Gault: I am talking about motor equipment.

Mr. Diehl: I am not confining it to motor trucks. I am asking for his opinion from his experience.

Exam. Lawton: He may give it.

The Witness: I have never made a study of that. I have no opinion on that.

[fol. 2960] Exam. Lawton: Exhibit 36 is received.

You are excused.

(Witness excused.)

Exam. Lawton: Off the record.

(Discussion off the record.)

J. F. SMALLEY was sworn and testified as follows:

Direct Examination.

By Mr. Allison:

Q. Please state your name and address.

A. J. F. Smalley, Tampa, Fla.

Q. Mr. Smalley, are you connected with a motor carrier certificated by this Commission?

A. Yes, Central Truck Lines, Inc.

Q. Their headquarters are in Tampa, Fla.?

A. That is correct.

Q. Mr. Smalley, is this a map generally delineating the authorized routes of your company?

A. Yes, it is.

Mr. Allison: For clarification, and for the purposes of better understanding of the witness' testimony, we would like to distribute these maps. I don't know that it is necessary to identify them in the record. We will do that if the Examiner thinks it is desirable.

Exam. Lawton: I think it would be better to have them [fol. 2961] in the record. The yellow map, Central Truck Lines, will be identified as Exhibit No. 37.

(Exhibit No. 37, Witness Smalley, was marked for identification.)

By Mr. Allison:

Q. Mr. Smalley, how long has your company been continuously engaged in operations as a motor freight common carrier?

A. Since 1927.

Q. Is the present president of your company the founder and continuous president of the company during its history?

A. Yes.

Q. He is the dominant factor in determining policies and controlling its operations?

A. Yes, he is.

Q. How long have you been continuously connected with the company?

A. Since 1929.

Q. Prior to that time did you have any connection with the automotive industry?

A. Yes, I was with the Mack Truck Company for a period of about three years prior to my association with Central Truck Lines, Inc.

Q. I believe you testified you were secretary and treasurer of the company?

A. That is correct, and I have been in the same position since 1929.

[fol. 2962] Q. Were you trained for that accounting work, and, if so, where?

A. I received my schooling in accounting and business administration at Georgia Tech. I was employed with the Mack Truck Company and, of course, I received considerable knowledge during the years I was with them.

Q. Mr. Smalley, your company has continuously been a regular route motor freight common carrier; is that correct?

A. That is correct, since our operation began.

Q. Have you ever experimented or participated in any other types of motor carrier operation, such as contract carriage, or anything of that sort?

A. No, we have continued the same type of operation, common carriage throughout, with the exception that back at the beginning of the Company's operations they did

have a furniture operation which was discontinued I believe as far back as 1928.

Q. Your company holds intrastate operating rights in the State of Florida, does it not?

A. Yes, it does.

Q. Does the State of Florida exercise jurisdiction over motor carriers?

A. Yes.

Q. When did that jurisdiction first develop?

[fol. 2963] A. I believe in the year 1929 the Florida legislature passed an act regulating motor freight carriers.

Q. Did your company participate in or sponsor the enactment of that law?

A. Yes, we did, and, in addition, after the law was enacted we assisted the Commission in promulgation of rules and regulations governing the operation of motor carriers.

Q. The jurisdiction of motor carriers in the State law is vested in the Florida Railroad and Public Utilities Commission?

A. That is true.

Q. Then your historical experience has been in the State of Florida a dual interest and intrastate regular route common carrier operation?

A. That is true.

Q. Does the Florida Railroad Commission, pursuant to its laws and regulations, regulate your routes?

A. Yes, they do. They prescribe the routes over which we may operate.

Q. Does it also regulate your operating time schedules?

A. Yes. Every Florida carrier is required to furnish time tables to the Florida Railroad and Public Utilities Commission and they are supposed to see that those time tables are kept and that the operators do not violate their routes or the time tables.

Q. Does the State of Florida impose a tax on certificated [fol. 2964] carriers?

A. Every certificated carrier holding a certificate from the Florida Railroad & Public Utilities Commission is required to pay one cent per mile for each mile of highway they traverse within the State of Florida.

Q. Whether the vehicle is loaded or empty?

A. That is correct.

Q. The Railroad Commission, pursuant to State law, also regulates height, width, weight, and size of equipment?

A. That is true.

Q. You are also required to purchase for hire tags in the State of Florida?

A. That is right. Every vehicle operated for hire within the State of Florida must have a for-hire license tags.

Q. Those tags are quite expensive, are they not?

A. Yes, sir; they are.

Q. Could you give a typical illustration for the benefit of the record?

A. Yes. A tractor weighing 10,000 pounds—the price of the tag is $1.75 multiplied by the weight of the tractor because the capacity cannot be less than the weight, so that would be $175 your tractor tags would cost, and a trailer weighing 10,000 pounds, the rate is $2 per hundredweight but applies on the rated capacity plus the weight of the semi-trailer. And since the capacity cannot be less than the weight you have 20,000 multiplied by $2 which gives [fol. 2965] you $400 as the cost of your trailer tag, and if you add that to your $175 you have $575 in license tags before you can begin to operate a tractor and semi-trailer over the highways.

Mr. Burton Wheeler: Is that on what you lease?

The Witness: It doesn't matter if it is leased or owned. If it is operated for hire it must have for hire tags.

By Mr. Allison:

Q. In addition to that you pay 7 cents State tax for every gallon of gasoline burned in those vehicles, and every gallon of diesel fuel oil?

A. That is correct.

Q. Is there a State association of motor carriers in Florida?

A. Florida Trucking Association.

Q. Do you hold any official position with that Association?

A. Yes. I am secretary and treasurer, and have been since the non-profit corporation was organized about 10 years ago.

Q. You served as president, I believe?

A. Yes, two terms as president.

Q. Is that association one of the component affiliates of the American Trucking Association?

A. Yes.

Q. Have you participated in the affairs of the A.T.A.?

A. Yes, I am a member of the A.T.A. executive committee.

Q. Did you attend the A.T.A. leasing committee's meeting in Chicago, referred to by Mr. Sutherland?

[fol. 2966] A. I did.

Q. Did you attend the regional committee meeting held by that committee in Atlanta?

A. Yes, I did.

Q. Did you hear all of Mr. Sutherland's testimony?

A. Yes.

Q. Did you hear Mr. Blanning's testimony?

A. I heard most of Mr. Blanning's testimony.

Q. At either of the meetings you attended at Atlanta or Chicago was Mr. C. J. Williams present?

A. I don't believe he was present in Chicago. I am sure he was not present in Atlanta. After I introduced my testimony before the committee I am sure he would have questioned me had he been there.

Q. You presented testimony before the committee?

A. Yes.

Q. Your company does trip leasing?

A. Yes, we do.

Q. And you appeared on behalf of the continuance of trip leasing?

A. I did.

Q. How many people appeared at the Atlanta hearing, if you recall?

A. I believe five or six.

Q. How many approved trip leasing?

[fol. 2967] A. All of those who were there were in favor of the continuation of trip leasing.

Q. Were you present in Washington in October during the annual convention of A.T.A.?

A. Yes, I was.

Q. Did you hear Mr. Sutherland present the committee report to the committee?

A. Yes, I did.

Q. That is the executive committee?

A. That is right.

Q. You heard his testimony regarding the appearance before the committee and at the convention?

A. I did.

Q. Was that statement substantially your recollection of what had taken place?

A. Yes. His testimony is in exact accordance with my remembrance of how the motions were passed and resolutions adopted.

Q. Mr. Smalley, in your approximately 20 years' experience in motor freight common carriage on the peninsula of Florida, do you find a constant condition with reference to the preponderant direction of the flow of traffic?

A. Yes. That has been true for years.

Q. Can you describe that briefly?

A. The preponderance of traffic moving into the peninsula of Florida is southbound. Very few manufacturing plants are in Florida and very little traffic moving north-[fol. 2968] bound other than fruit and vegetables which are grown extensively in the State of Florida.

Q. Are those fruits and vegetables moved both as fresh unprocessed products and as canned and processed products?

A. Yes, both types.

Q. Florida being surrounded on three sides by water has very little traffic that goes into the State and beyond the State; is that correct?

A. That is true.

Q. There is a negligible amount which moves into Florida and out through the ports; is that right?

A. A very negligible amount. There is some traffic exported through the ports of Jacksonville, Tampa, and Miami.

Q. Florida is not a manufacturing or industrial center, is it?

A. No, it is not.

Q. Mr. Smalley, do you regard your company as the distribution type of carrier?

A. Very definitely we are a distribution type of carrier.

Q. Will you explain briefly what you mean by that term?

A. Well, we maintain 40 terminals in Florida, and from those terminals we serve many small communities and radial operations. Many of those small communities have no other form of transportation.

It puts us in the position of having a third operation, you [fol. 2969] might say. For instance, traffic is handled from Atlanta, Ga., to Tampa, Fla., and it has to be handled in Atlanta, rehandled in Tampa, and rehandled to small points in the vicinity of Tampa. The same would be true of Miami, West Palm Beach, Orlando, Jacksonville, Gainesville, and other terminal points.

Q. Is it practical or feasible to use any leased equipment for those distribution purposes?

A. No, it is not.

Q. Therefore, as a consequence, do you find you have dedicated a certain proportion of your carrier-owned equipment to that distribution service?

A. Yes, we have, and it takes a large part of our equipment to do it.

Q. All of that is done by men on your regular pay roll?

A. That is correct, in vehicles owned by ourselves and employed by us in an employee capacity.

Q. Can you tell us approximately how many employees you have regularly employed on your pay roll?

A. Approximately 600.

Q. In order to develop one other phase of your historical background, how long has your superintendent of maintenance been continuously connected with Central Truck Lines?

A. Approximately 20 years. There was a skip of about a year in his employment at which time he was employed by the Greyhound Bus people.

[fol. 2970] Q. Your superintendent of terminals has been with you since the company started in business?

A. Yes. He was employed as a driver shortly after the company started doing business. At this time he occupies the position of superintendent of terminals.

Q. Mr. Smalley, you have testified that you utilize leased equipment to supplement your own equipment and to provide service.

A. That is correct.